TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 896.

THE INDIANAPOLIS & ST. LOUIS RAILROAD COMPANY, APPELLANT,

vs.

JAMES L. VANCE, COLLECTOR OF EDGAR COUNTY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 15, 1877.

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2 Pleas in the Circuit Court of the United States of America for the Southern District of the State of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit, *pro tempore*, sole judge of said circuit court, on Friday, the 23d day of March, at the January term of said court, in the year of our Lord eighteen hundred and seventy seven, and of our independence the one hundred and first year.

J. A. JONES, *Clerk.*

INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY
vs.
JAMES L. VANCE, COLLECTOR OF EDGAR COUNTY; WILLIAM B. GALBREATH, COLLECTOR OF COLES COUNTY; JOHN H DUNSCOMB, COLLECTOR OF MOULTRIE COUNTY; WILLIAM C. MILLER, COLLECTOR OF SHELBY COUNTY; AMOS A. RHODES, COLLECTOR OF CHRISTIAN COUNTY; M. C. McWILLIAMS, COLLECTOR OF MONTGOMERY COUNTY; L. B. CORBIN, COLLECTOR OF MACOUPIN COUNTY; JAMES
3 T. COOPER, COLLECTOR OF MADISON COUNTY; H. G. WEBER, COLLECTOR OF ST. CLAIR COUNTY, AND JOHN FISHBACK, COLLECTOR OF CITY OF ALTON. } Chancery.

SOUTHERN DISTRICT OF ILLINOIS, *ss.*

The Indianapolis and St. Louis Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Indiana, puts in its place B. W. Hanna, Esq., and H. P. Buxton, Esq., its solicitors in a bill in chancery, against James L. Vance, collector of Edgar county; William B. Galbreath, collector of Coles county; John H. Dunscomb, collector of Moultrie county; William C. Miller, collector of Shelby county; Amos A. Rhodes, collector of Christian county; M. C. McWilliams, collector of Montgomery county; L. B. Corbin, collector of Macoupin county; James T. Cooper, collector of Madison county; H. G. Weber, collector of St. Clair county, and John Fishback, collector of city of Alton, defendants to said bill, who put in their place James K. Edsall, Esq., the attorney-general of the State of Illinois, their solicitor.

4 SOUTHERN DISTRICT OF ILLINOIS, *ss.*

Be it remembered, that heretofore, to wit, on the 20th day of July, A. D. eighteen hundred and seventy-six, came said complainant, by its said solicitors, and filed in the office of the clerk of said court its bond for costs in said cause, its bill of complaint and exhibits thereto, which said bond for costs, bill, and exhibits are in the words and figures following, to wit.

Bond for Costs.

Circuit Court of the United States, Southern District of Illinois, June term, 1876.

INDIANAPOLIS & ST. LOUIS RAILROAD CO.
vs.
JAMES L. VANCE ET AL.

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite parties or to any of the officers of this court, in pursuance of the laws of this state and of the United States.

Dated this 20th day of July, 1876.

5 H. P. BUXTON.

(Endorsed:) Filed July 20, 1876. J. A. Jones, clerk.

Bill.

UNITED STATES OF AMERICA.

To the Hon. the Judge of the Circuit Court of the United States for the Southern District of Illinois.

Your orator, the "Indianapolis and St. Louis Railroad Company," respectfully shows unto your honor, that it is a corporation organized and existing under and by virtue of the laws of the State of Indiana, and a citizen of said state, and has its general office in the city of Indianapolis in said state, and the articles of incorporation of said company are herewith filed, marked exhibit "A," and made a part of this your orator's bill.

Your orator further shows that on the 11th day of September, 1867, it leased of the St. Louis, Alton and Terre Haute Railroad Company certain lines of railroad and appurtenances, situate
6 in the State of Illinois, particularly described in the lease of that date, a copy of which is herewith filed, marked exhibit "B," and made part of this bill, which lines of railroad, so leased as aforesaid, it has held, operated, and maintained from thence hitherto.

Your orator further shows that it, as required by the laws of the State of Illinois, returned to the auditor of public accounts of said state true and correct schedules of all the property it possessed in said state on the first day of May in each of the years 1873, 1874, and 1875, a copy of which schedules are herewith filed, marked exhibits "C," "D," and "E," and made part of this bill.

Your orator further shows that under the laws of the State of Illinois, a state board of equalization convened in the city of Springfield, in said state, in each of said years 1873, '4, '5, and did then and there assess against your orator, as capital stock for the year 1873, the sum of two million nine hundred and
7 nineteen thousand one hundred and eighty-four dollars ($2,919,184); for the year 1874, the sum of $1,125,139, and

for the year 1875, the sum of $1,004,416, as appears by exhibits F, G, and H, filed herewith and made part of this bill.

Your orator would further show that said assessment of capital stock against it is unjust, illegal, and void, and made without authority of law.

Your orator further shows that said sums unlawfully assessed against your orator aforesaid, have been certified to the county clerks of the several counties through which its said line of road runs, to the county clerks who have extended taxes thereon against your orator, and placed warrants for the collection of the same in the hands of the several collectors of said counties, who threaten to levy the same upon the property of your orator, and to make sale thereof, which counties and collectors are as follows, to wit:

Edgar county,	James L. Vance,	collector.
Coles "	William B. Galbreath,	"
Moultrie "	John H. Dunscomb,	"
Shelby "	William C. Miller,	"
Christian "	Amos A. Rhodes,	"
Montgomery "	M. C. McWilliams,	"
Macoupin "	L. B. Corbin,	"
Madison "	James T. Cooper,	"
St. Clair "	H. G. Weber,	"
8 City of Alton,	John Fischback,	"

The amount of taxes assessed against said capital stock in said several counties against your orator is $76,464.35, and is distributed between said counties in each of said years, as shown by exhibit "I" filed herewith and made a part of this bill.

Your orator further shows that it will be irreparably injured if said taxes are collected by sale of its property and that a demand of the same is a perpetual cloud upon its property, and your orator fears that unless restrained, said collectors will levy upon its property and sell the same for said taxes so illegally assessed. So, inasmuch as your orator is without adequate remedy at law, it prays that said collectors hereinbefore-named may be made defendants to this bill; that subpœna in chancery issue requiring them to appear and answer the same according to law, their answer under oath being hereby expressly waived; that until the further order of this court in the premises a restraining order may issue restraining them
9 from levying upon the property or taking any steps to collect said taxes of your orator under or by virtue of any warrant or warrants which may be in their hands for the collection thereof, and upon a final hearing that said injunction may be made perpetual, and for such further relief as may be equitable in the premises.

THE INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY,
By B. W. HANNA,
H. P. BUXTON,
Solicitors.

STATE OF ILLINOIS, } ss.
SANGAMON COUNTY. }

B. W. Hanna, being duly sworn, deposes and says that he is the agent and attorney of the above-named Indianapolis and St. Louis Railroad Company; that he has read the above bill, and that the facts therein stated are true in substance and fact, and that he is authorized by said complainant to cause said bill to be filed, and further says not.

B. W. HANNA.

10 Subscribed and sworn to before me, this 20th day of July, A. D. 1876.

J. A. JONES, *Clerk.*

(Endorsed:) Filed July 20th, 1876. J. A. Jones, clk.

Exhibit "A" to Bill.

Articles of association of the Indianapolis and St. Louis Railroad Co., agreed to this twenty-eighth day of August, 1867.

We, the subscribers, for the purpose of forming a corporation to construct, own, and maintain a railroad under the general laws of Indiana, from Indianapolis, in the State of Indiana, to a point on the line dividing Indiana and Illinois at or near where the St. Louis, Alton and Terre Haute railroad intersects the same, do hereby make and enter into the following articles of association:

First. The name of said corporation is the Indianapolis and St. Louis Railroad Company.

Second. The amount of the capital stock of the company is one million dollars.

11 Third. The number of shares of which said stock shall consist is twenty thousand of fifty dollars each.

Fourth. The number of directors is six.

Fifth. The names of said directors are Geo. W. Cass, Pliny Hoagland, Stillman Witt, L. M. Hubby, Thomas A. Morris, and Henry C. Lord.

Sixth. The name of the place from which the proposed road is to be constructed is Indianapolis.

Seventh. The place to which the proposed road is to be constructed is on the line dividing Indiana and Illinois at or near the intersection of the same with St. Louis, Alton and Terre Haute railroad.

Eighth. Said road is to pass into or through the counties of Marion, Hendricks, Putnam, Clay, and Vigo.

Ninth. The length of said road, as near as may be, is seventy-five miles. For the purpose above set forth, we hereby take the number of shares set opposite our names.

	Shares.
Stillman Witt, Cleveland, Ohio	200
Henry C. Lord, Cincinnati, Ohio	200
12 Leander M. Hubby, Cleveland, Ohio	200

William Dwight, Boston, Mass., by H. C. Lord, attorney	200
Thomas A. Morris, Indianapolis, Indiana	200
George W. Cass, Pittsburg, Pennsylvania	200
Pliny Hoagland, Fort Wayne, Indiana, by G. W. Cass, attorney	200
A Stone, Jr., Cleveland, Ohio	200
D. A. Dwight, Boston, Mass., by H. C. Lord, attorney	40
Thomas D. Messler, Pittsburg, Penn., by G. W. Cass, attorney	20
Russell Sage, New York	20
Edward King, Indianapolis, Ind	20
W. H. Harris, Indianapolis, Ind	20
Charles Butler, New York	20
Robert Bayard, New York, by Charles Butler	20
W. W. Smith, Cincinnati, Ohio	40
Samuel J. Tilden, New York	20

STATE OF INDIANA,
OFFICE OF SECRETARY OF STATE. } *ss.*

I, —— —— Secretary of State for the State of Indiana, hereby certify that the above and foregoing is a full, true, and complete copy of the articles of association of Indianapolis and
13 St. Louis Railroad Company, now on file in the office of Secretary of State for the State of Indiana, on this 17th day of July, A. D. 1876.

In testimony whereof I have hereunto set my hand and affixed the seal of the State of Indiana, at the city of Indianapolis, this 17th day of July, A. D. 1876.

[L. S.]

JNO. E. NEFF,
Secretary of State.

The original articles filed in my office are duly stamped.

JNO. E. NEFF,
Secretary of State.

(Endorsed:) Filed July 20th, 1876. J. A. Jones, clk.

[Here follows printed book, marked Exhibit "B" to bill.]

14 *Auditor's Form No.* 12.

Annual return of the Indianapolis and St. Louis Railroad Company to the auditor of public accounts, as required by the 48th section of state revenue law.

Schedule No. 1.

Showing the property denominated "railroad track," belonging to or controlled by the Indianapolis and St. Louis Railroad Company on the 1st day of May, 1873, as required of railroad companies, according to section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

Counties.	Right of Way.		TRACK.						Total values returned listed to county.
			Main.			Side, Second or Turnout.			
	Acres.	Value.	Miles.	Feet.	Value.	Miles.	Feet.	Value.	
Edgar.....	303+	$3,030	25	132,000	$50,000	2	11,866	$4,497 21	$57,557 21
Coles.....	339+	3,390	28	147,840	56,000	6 6/10	34,972	13,259 39	72,644 39
Moultrie.....	48½	485	4	21,120	8,000	¾	1,331	504 45	8,989 45
Shelby.....	327¼	3,272 50	27	142,560	54,000	1 9/10	10,351	3,923 03	61,195 53
Christian.....	133 32/100	1,333 20	11	58,080	22,000	1½	8,389	3,179 43	26,512 63
Montgomery..	412 8/10	4,120 80	34	179,520	68,000	4¼	22,891	8,675 69	80,796 49
Macoupin.....	242 40/100	2,424	20	105,600	40,000	1¼	6,932	2,627 23	45,051 23
Madison.....	381 78/100	3,817 80	31½	168,960	63,000	4 2/5	23,149	8,773 47	75,591 24
St. Clair.....	30 30/100	303	2½	13,200	5,000	5½	29,452	11,163 21	16,466 31
Totals in state.	2,217.63	$22,176 30	183	966,240	$366,000	28¼	149,333	$56,598 21	$444,774 51

Exhibit "C" to bill.

15 *Schedule No. 2.*

Showing the property denominated "rolling stock" belonging to or controlled or operated by the Indianapolis and St. Louis Railroad Company on the 1st day of May, 1873, as required of railroad companies according to section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

Description for length of main track on which said rolling stock is used in each county. See schedule No. 1.	No.	Average value.	Total listed value.
Locomotives, all classes	51	$3,492 00	$178,092 00
Passenger cars, all classes	30	1,000 00	30,000 00
Sleeping, dining, and drawing cars	.....	.....	.....
Express cars, Baggage cars	13	525 00	6,825 00
House cars	409	250 00	102,250 00
Cattle cars	83	310 00	25,130 00
Coal cars, Platform cars	160	225 00	37,125 00
Wrecking cars	.....	.....	.....
Pay cars	.....	.....	.....
Hand cars	48	25 00	1,200 00
All other kind of cars	6	275 00	1,650 00
Total listed value of rolling stock	.....	.....	382,272 00

Length of main track on which said rolling stock is used in Illinois	183 miles,	966,240 feet.
Length of main track on which said rolling stock is used elsewhere	83 miles,	438,240 feet.
Total length of road	266 miles,	1,404,480 feet.

Remarks.

16 *Schedule No. 3.*

Showing the number of ties in track per mile; the weight of iron or steel per yard, used in main and side track; what joints or chairs are used in track; the kind of ballasting of road; quality of buildings or structures on railroad track; the length of time iron (or steel) in track has been used, and the length of time the road has been built; all belonging to or controlled by the Indianapolis & St. Louis Railroad Company on the 1st day of May, 1873, and hereby scheduled and returned as required of railroad companies by section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

State number of ties in track per mile. } Average 2,300.

State weight of iron and steel per yard in main track and side, second or turnout.
Iron, weight per yard 60 main.
Steel, " " "
Iron, " " 60 side, second or turnout.
Steel, " " " " "

State kind of "joints" or "chairs" used in track. } About two-thirds are fish splice and one-third are old chair joint.

State kind of ballasting used in road.
Miles, ——— feet. Rock.
Miles, about 10 feet. Gravel.
Miles, about 100 feet. Dirt.
Miles, about 73 feet. Sand and other material.

17 State number of buildings or other structures on railroad track.

State quality of buildings or other structures on railroad track. } Buildings are few and poor.

State length of time iron or steel in track has been used. } Iron has been used from one to fifteen years.

State length of time road has been built.

State proportion of iron and steel used in "main" and "side," "second or turnouts."
All Iron.
Iron, miles. Feet. Main.
Steel, miles. Feet. Main.
Iron, miles. Feet. Side, second or turnout.
Steel, miles. Feet. " " " "

18 *Schedule No. 4.*

Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided; the amount of capital stock paid up; the market value or actual value of the shares of said stock; the total indebtedness, except for current expenses for operating the road, and the total listed valuation of all the tangible property in this state belonging to or controlled by the ——— rail——— company on the 1st day of May, 187–, as required of railroad companies, according to section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

1st. The amount of capital stock authorized and the number of shares into which such capital is divided, with the amount of each share.
Amount of capital stock...
No. of shares.....
Amount of each share.....$

Proportion of capital stock belonging in Illinois and elsewhere.	Amt. of capital stock in Ill.$ " " elsewhere.$ Total.....$
2nd. The amount of capital stock paid up.	Capital stock paid up.....$ Proportion paid up in Illinois....$ Proportion paid up elsewhere....$ Total.....$
19 3rd. The market value, or if no market value, then the actual value of the shares of stock.	Market value.....$ or Actual value.....$
4th. Total amount of all indebtedness except for current expenses for operating the road.	Total indebtedness, including current expenses for operating the road.....$ Deduct indebtedness for current expenses created in operating the road.....$ Total.....$
5th. The total listed valuation of all the tangible property in this state.	1. Railroad track.....$ 2. Rolling-stock, proportion in Ills.....$ 3. Real estate—Lands.....$ 4. Real estate—Lots.....$ 5. Personal property.....$ Total.....$

(Written across face:) These items are not in the possession of this company, and can only be furnished by the St. Louis, Alton and Terre Haute Company. *The capital stock has no value*, or such is understood to be the case.

STATE OF INDIANA, } ss.
MARION COUNTY. }

E. W. Woodward, president, and Edward King, secretary of the Indianapolis and St. Louis Railroad Company, being duly sworn, depose and say, each for himself, that they are the above-
20 entitled officers of the said railroad company, and that the foregoing schedules, respectively numbered one (1), two (2), three (3), and four (4), contain and are full, true, and correct statements and schedules of the property (real and personal) of the

said railroad company, which are required to be returned to the auditor of public accounts, under provisions of section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

(Signed) E. W. WOODWARD, *Prest.*
(Signed) EDWARD KING, *Sec'y.*

Subscribed and sworn to before me, this twenty-fourth day of June, 1873.

(Signed) SAM'L E. FRAZER,
[NOTARIAL SEAL.] *Notary Public.*

(Endorsed:) No. 12. Return of Indianapolis and St. Louis Railroad Company. May 1st, 1873. Received June 25th, 1873. (Signed) C. E. Lippincott, Auditor P. A.

21 *Auditor's Form No.* 12.

Annual Return

Of the Indianapolis and St. Louis Railroad Company to the auditor of public accounts, as required by the 48th section of the state revenue law.

Schedule No. 1.

Showing the property denominated "railroad track" belonging to or controlled by the Indianapolis and St. Louis Railroad Company on the 1st day of May, 1874, as required of railroad companies, according to section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

Counties.	Right of Way.		TRACK.						Total values returned listed to county.
			Main.			Side, Second or Turnout.			
	Acres.	Value.	Miles.	Feet.	Value.	Miles.	Feet.	Value.	
Edgar	303	$3,030 00	25	132,000	$50,000	2	11,866	4,449 21	57,527 21
Coles	339	3,390 00	28	147,840	56,000	6 6/100	34,972	13,254 00	72,644 39
Moultrie	48 1/2	485 00	4	21,120	8,000	1/4	1,331	504 45	8,989 45
Shelby	327 1/4	3,272 50	27	142,560	54,000	1 9/10	10,351	3,923 03	61,195 53
Christian	133 32/100	1,333 20	11	58,080	22,000	1 1/2	8,389	3,179 43	26,502 63
Montgomery	412 80/100	4,120 80	34	179,520	68,000	4 1/4	22,891	8,675 69	80,796 49
Macoupin	242 40/100	2,424 00	20	105,600	40,000	1 1/2	6,932	2,629 23	45,051 23
Madison	381 78/100	3,817 80	31 1/2	168,960	63,000	4 3/4	23,149	8,773 47	75,591 27
St. Clair	30 30/100	303 00	2 1/2	13,200	5,000	5 1/2	29,452	11,163 31	16,466 31
Totals in state.	2,217.63	22,176 30	103	966,240	366,000	28	149,333	56,598 21	444,774 51

Exhibit "D" to bill.

22 *Schedule No. 2.*

Showing the property denominated rolling stock, belonging to or controlled, or operated by the Indianapolis and St. Louis Railroad Company on the 1st day of May, 1879, as required of railroad companies, according to section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

Description for length of main track on which said rolling stock is used in each county. See schedule No. 1.	No.	Average value.	Total listed value.
Locomotives, all classes	51	3,490 00	178,092
Passenger cars, all classes	30	1,000 00	30,000
Sleeping, dining, and drawing-room cars			
Express cars / Baggage cars	13	525 00	6,825
House cars	409	250 00	102,250
Cattle cars	83	310 00	25,130
Coal cars / Platform cars	160	225 00	37,200
Wrecking cars			
Pay cars			
Hand cars	48	25 00	1,200
All other kind of cars	6	275 00	1,650
Total listed value of rolling stock			$382,272
Length of main track on which said rolling stock is used in Illinois	183 miles,		966,240 feet.
Elsewhere	83 miles,		119,301 feet.
Total length of road	266 miles,		1,085,541 feet.

Remarks.

23 *Schedule No. 3.*

Showing the number of ties in track per mile; the weight of iron or steel per yard, used in main and side track; what joints or chairs are used in track; the kind of ballasting of road; quality of buildings or structures on railroad track; the length of time iron (or steel) in track has been used, and the length of time the road has been built; all belonging to or controlled by the railroad company on the 1st day of May, 187 , and hereby scheduled and returned, as required of railroad companies by section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30th, 1872.

State number of ties in track, per mile.	About 10,000.		
State weight of iron and steel per yard in "main track" and side, second or turnout.	Iron, weight per yard 60 lbs.		main.
	Steel, " " "		main.
	Iron, " " "	60 lbs.	side, second or turnout.
	Steel, " " "		side, second or turnout.
State kind of "joints" or "chairs" used in track.	Fish joints.		
State kind of ballasting used in road. Principally dirt.	Miles	Feet	Rock.
	Miles	Feet	Gravel.
	Miles	Feet	Dirt.
	Miles	Feet	Other material.
24 State number of buildings or other structures on railroad track.			
State quality of buildings or other structures on railroad track.			
State length of time iron or steel in track has been used.			
State length of time road has been built.			
State proportion of iron and steel used in "main" and "side, second or turnouts."	Iron, Miles	Feet	Main
	Steel, Miles	Feet	Main
	Iron, Miles	Feet	Side, second or turnout.
	Steel, Miles	Feet	Side, second or turnout.

25 *Schedule No. 4.*

Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided; the amount of capital stock paid up; the market value or actual value of the shares of said stock; the total indebtedness except for current expenses for operating the road, and the total listed valuation of all the tangible property in this state belonging to or controlled by the ——— rail ——— company on the 1st day of May, 187 , as required of railroad companies, according to section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

1st. The amount of capital stock authorized and the number of shares into which such capital is divided, with the amount of each share.

Amount of capital stock.....
No. of shares.....
Amount of each share.....$

Proportion of capital stock belonging in Illinois and elsewhere.

Amount of capital stock in Illinois.$
" " " elsewhere.$
Total.....$

2d. The amount of capital stock paid up.

Capital stock paid up.....$
Proportion paid up in Illinois.....$
Proportion paid up elsewhere.....$
Total.....$

3d. The market value, or if no market value, then the actual value of the shares of stock.

Market value.....$
or
Actual value.....$

[The following written across the printed items of this page in original:]

The Indianapolis & St. Louis R. R. Co. have no interest in the capital stock of the St. Louis, Alton & Terre Haute R. R. Co., and its officers have no knowledge of the amount of capital stock. This information should be furnished by the corporate officers of the St. L., A. & T. H. R. R. Co.

26 4th. Total amount of all indebtedness except for current expenses for operating the road.

The Indianapolis and St. Louis Railroad Company has no knowledge of the amount of of the indebtedness of the St. Louis, Alton and Terre Haute R. R. Co. For information refer to said road.

Total indebtedness, including current expenses for operating the road.....$
Deduct indebtedness for current expenses created in operating the road.....$
Total.....$

5th. The total listed valuation of all the tangible property in this state.

1. Railroad track.....$
2. Rolling-stock (proportion in Illinois).....$
3. Real estate—Lands.....$
4. Real estate—Lots.....$
5. Personal property.....$
Total.....$

STATE OF INDIANA, } ss.
MARION COUNTY. }

E. W. Woodward, president, and E. King, secretary of the I. and St. L. Railroad Company, being duly sworn, depose and say,

27 each for himself, that they are the above-entitled officers of the said railroad company, and that the foregoing schedules, respectively numbered one (1), two (2), three (3), and four (4), contain and are full, true, and correct statements and schedules of the property (real and personal) of the said railroad company, which are required to be returned to the auditor of public accounts, under provisions of section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

(Signed) E. W. WOODWARD, *Prest.*
(Signed) E. KING, *Sec'y.*

Subscribed and sworn to before me, this 13th day of August, 1874. (Signed) S. E. FRAZEE,
[SEAL.] *Notary Public.*

May be sworn to before a notary public, justice of the peace, or any officer to administer oaths.

(Endorsed:) No. 12. Return of Indianapolis & St. Louis Railroad Company. May 1st, 1874. Received August 14th, 1874. (Signed) C. E. Lippincott, Auditor P. A.

28 *Auditor's Form No.* 12.

Annual return of the Indianapolis & St. Louis Railroad Company to the auditor of public accounts, as required by the 48th section of state revenue law.

Schedule No. 1.

Showing the property denominated "railroad track" belonging to or controlled by the Indianapolis & St. Louis Railroad Company on the first day of May, 1875, as required of railroad companies, according to section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

Counties.	Right of way and improvements thereon.			Track.						Total values returned listed to county.
	Acres.		Value of buildings on right of way. (See Schedule No. 5.)	Main.			Side, second or turnout.			
	No.	Value, excluding improvements.		Miles.	Feet.	Value.	Miles.	Feet.	Value.	
Edgar,	330	$3,500	$1,200	25	132,000	$50,000	2	11,866	$3,559	$58,259
Coles,	350	3,500	27,400	28	147,840	56,000	6.06	34,972	10,491	97,391
Moultrie,	48.50	485	None.	4	21,120	8,000	.25	1,331	504 45	8,989 45
Shelby,	330	3,300	800	27	142,560	54,000	1.90	10,351	4,000	62,100
Christian,	121.50	1,215	None.	11	58,080	33,000	1.50	8,389	3,000	37,215
Montgomery,	410	4,000	1,250	34	179,520	68,000	4.50	22,891	3,000	76,250
Macoupin,	250	2,500	450	20	105,600	40,000	1.25	8,452	2,000	45,950
Madison,	185	1,850	2,300	31½	166,320	60,000	4.40	21,629	8,000	72,150
St. Clair,	30	400	1,000	2½	13,200	6,000	5.50	29,432	10,000	17,400
Totals in state,	2,055	$20,750	$33,400	183	966,240	$375,000	27.36	144,460	$45,554 45	$465,704 45

Exhibit "E" to bill.

29 *Schedule No. 2.*

Showing the property denominated "rolling-stock" belonging to or controlled or operated by the Indianapolis & St. Louis Railroad Company on the first day of May, 1875, as required of railroad companies, according to section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

Description for length of main track on which said rolling-stock is used in each county. See schedule No. 1.	No.	Average value.	Total listed value.
Locomotives—all classes	49	3000 00	147,000 00
Passenger cars—all classes	34	1000 00	34,000 00
Sleeping, dining, and drawing-room cars.			
Express cars... / Baggage cars..	17	450 00	7,650 00
House cars	652	200 00	130,400 00
Cattle cars	201	200 00	40,200 00
Coal cars	310	150 00	46,500 00
Platform cars	163	150 00	24,450 00
Wrecking cars			
Pay cars			
Hand cars	48	15 00	720 00
All other kind of cars	36	200 00	7,200 00
Total listed value of rolling-stock			$438,120 00

Length of main track on which said rolling-stock is used in Illinois	183	miles	966,240 feet.
Length of main track on which said rolling-stock is used elsewhere	83	"	438,240 "
Total length of road	266	"	1,404,480 "

Remarks.

30 *Schedule No. 3.*

Showing the number of ties in track per mile; the weight of iron or steel per yard used in main and side track; what joints or chairs are used in track; the kind of ballasting of road; quality of buildings or structures on railroad track; the length of time iron (or steel) in track has been used, and the length of time the road has been built; all belonging to or controlled by the Indianapolis and Saint Louis Railroad Company, on the 1st day of May, 1875, and hereby scheduled and returned, as required of railroad companies by section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30th, 1872.

State number of ties in track per mile.	About 2,500.
State weight of iron and steel per yard in "main track" and side, second or turnout.	Iron, weight per yard 60 lbs. main. Steel, " " " main. Iron, " " " 60 lbs. side, second or turnout. Steel, weight per yard, side, second or turnout.
State kind of "joints" or "chairs" used in track	Fish joints.
State kind of ballasting used in road. Principally dirt ballast.	Miles Feet Rock. Miles Feet Gravel. Miles Feet Dirt. Miles Feet Other material.
31 State number of buildings or other structures on railroad track.	
State quality of buildings or other structures on railroad track.	
State length of time iron or steel in track has been used.	
State length of time road has been built.	
State proportion of iron and steel used in "main" and "side, second or turnouts."	Iron, miles. Feet. Main. Steel, miles. Feet. Main. Iron, miles. Feet. Side, second or turnout. Steel, miles. Feet. Side, second or turnout.

32 *Schedule No. 4.*

Showing the amount of capital stock authorized, and the number of shares into which such capital stock is divided; the amount of capital stock paid up; the market value or actual value of the shares of said stock; the total indebtedness, except for current expenses for operating the road, and the total listed valuation of all the tangible property in this state belonging to or controlled by the Indianapolis and Saint Louis Railroad Company on the 1st day of May, 1875, as required of railroad companies, according to section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

1st. The amount of capital stock authorized and the number of shares into which such capital is divided, with the amount of each share.	Amount of capital stock..... No. of shares..... Amount of each share. .....$

Proportion of capital stock belonging in Illinois and elsewhere.

Amount of capital sock in Illinois .....$
Amount of capital stock elsewhere.....$

Total.....$

2d. The amount of capital stock paid up,

Capital stock paid up.....$
Proportion paid up in Illinois...$
Proportion paid up elsewhere...$

Total.....$

(Across the face:) The Indianapolis & St. Louis R. R. Co. have no interest in the capital stock of the St. Louis, Alton & Terre Haute R. R. Co., and its officers have no knowledge of the amount of such capital stock. This information should be furnished by the corporate officers of the St. Louis, Alton & Terre Haute R. R. Co.

33 3d. The market value, or if no market value, then the actual value of the shares of stock.

Market value.....$
or
Actual value.....$

4th. Total amount of all indebtedness, except for current expenses for operating the road. The Indianapolis & St. Louis Railroad Company has no knowledge of the amount of the indebtedness of the St. Louis, Alton & Terre Haute Railroad Company. For information refer to said road.

Total indebtedness, including current expenses for operating the road.....$
Deduct indebtedness for current expenses created in operating the road.....$

Total .....$

5th. The total listed valuation of all the tangible property in this state.

1. Railroad track..... .....$
2. Rolling-stock (proportion in Illinois).....$
3. Real estate—Lands.....$
4. Real estate—Lots.....$
5. Personal property.....$

Total..... .....$

STATE OF ILLINOIS, } ss.
MARION COUNTY. }

34 E. W. Woodward, president, and E. King, secretary of the Indianapolis and St. Louis Railroad Company, being duly sworn, depose and say, each for himself, that they are the above-entitled officers of the said railroad company, and that

the foregoing schedules, respectively numbered one (1), two (2), three (3), and (4), contain and are full, true, and correct statements and schedules of the property (real and personal) of the said railroad company, which are required to be returned to the auditor of public accounts, under provisions of section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

(Signed) E. W. WOODWARD, *Pres't.*
(Signed) E. KING, *Sec'y.*

Subscribed and sworn to before me, this 29th day of June, 1875.
[NOTARIAL SEAL.] (Signed) S. E. FRAZEE.
Notary Public.

May be sworn to before a notary public, justice of the peace, or any officer to administer oaths.

(Endorsed:) No. 12. Return of Indianapolis and St. Louis Railroad Company. May 1st, 1875. Received July 6th, 1875. ——— auditor P. A.

Exhibit "E," 68¾.

[Here follows 3 papers, books, marked Exhibits "*F*" "*G*" & "*H*."]

35 *Exhibit "I" to Bill.*

INDIANAPOLIS & ST. LOUIS RAILROAD COMPANY,
RUSSELL ELLIOT, *Auditor.* ACCOUNTING DEPARTMENT,
INDIANAPOLIS, IND., *July* 7, 1876.

Tax on capital stock in Illinois. Statement furnished by B. W. H., atty.

Counties.	1873.	1874.	1875.
Edgar Co.....	7,776 67	1,881 29	1,824 48
Coles "	8,372 29	3,514 73	3,002 14
Moultrie Co.....	600	600	451 05
Shelby "	4,761 39	3,474 19	2,246 37
Christian "	3,144 28	1,114 27	0 00
Montgomery "	8,273 06	3,083 85	2,367 41
Macoupin "	3,993 61	2,182 23	2,384 81
Madison "	5,886 58	2,667 54	2,580 26
St. Clair "		139 73	142 12
	42,807 88	18,657 83	14,998 64

Recapitulation.

1873	42,807	88
1874	18,657	83
1875	14,998	64
	$76,464	35

(Endorsed:) Filed July 20, 1876. J. A. Jones, Clerk.

Exhibit "I" to bill.

36 And afterwards, to wit, on said 20th day of July, at the June term of said court, in the year last aforesaid, the following proceedings were had in said court in said cause and entered of record, to wit;

Order for Injunction.

INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY
vs.
JAMES L. VANCE, COLLECTOR, ET AL. } In Chancery.

On motion of complainant, by B. W. Hanna, Esq., and H. B. Buxton, Esq., its solicitors, it is ordered that a writ of injunction issue herein in accordance with the prayer of complainant's bill.

And that afterwards, to wit, on said 20th day of July, in the year last aforesaid, a writ of injunction was issued in said cause, out of the office of the clerk of said court, directed to the marshal of said district to execute, which said writ of injunction, together with the return of the marshal thereon, is in the words and figures following, to wit:

Injunction.

37 CIRCUIT COURT OF THE UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF ILLINOIS. } *ss.*

The United States of America,

To James L. Vance, collector of Edgar county; William B. Galbreath, collector of Coles county; John H. Dunscomb, collector of Moultrie county; William C. Miller, collector of Shelby county; Amos A. Rhodes, collector of Christian county; M. C. McWilliams, collector of Montgomery county; L. B. Corbin, collector of Macoupin county; James T. Cooper, collector of Madison county; H. G. Weber, collector of St. Clair county, and John Fischback, collector of city of Alton, and to your counsellors, attorneys, solicitors, trustees, and agents, and to each and every of them, greeting:

Whereas, it hath been represented to the judges of our Circuit Court of the United States for the Southern District of Illinois, in

chancery sitting, on the part of the Indianapolis and St. Louis Railroad Company, complainant in a certain bill of complaint, exhibited in our said circuit Court, on the chancery side thereof, before the judges of said court, against you, the said James
38 L. Vance, collector of Edgar county; William B. Galbreath, collector of Coles county; John H. Dunscomb, collector of Moultrie county; William C. Miller, collector of Shelby county; Amos A. Rhodes, collector of Christian county; M. C. McWilliams, collector of Montgomery county; L. B. Corbin, collector of Macoupin county; James T. Cooper, collector of Madison county, H. G. Weber, collector of St. Clair county, and John Fischback, collector of city of Alton, to be relieved touching the matters complained of. In which said bill it is stated, among other things, that you are combining and confederating with others to injure the complainant touching the matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience. And it being ordered that a writ of injunction issue out of said court, upon said bill, enjoining and restraining you and each of you, as praved for in said bill: we, therefore, in consideration thereof, and of the particular matters in said bill set forth, do strictly command you, the said James L. Vance, collector of Edgar county; William B.
39 Galbreath, collector of Coles county; John H. Dunscomb, collector of Moultrie county; William C. Miller, collector of Shelby county; Amos A. Rhodes, collector of Christian county; M. C. McWilliams, collector of Montgomery county; L. B. Corbin, collector of Macoupin county; James T. Cooper, collector of Madison county; H. G. Weber, collector of St. Clair county, and John Fischback, collector of city of Alton, your counsellors, attorneys, solicitors, trustees, and agents, and each and every of you, that you do absolutely desist and refrain from levying upon the property or taking any steps to collect the taxes on the capital stock of the Indianapolis and St. Louis Railroad Company for the years 1873, 1874, and 1875, under or by virtue of any warrant or warrants which may be in their hands for the collection of said taxes, until this honorable court, in chancery sitting, shall make other order to the contrary.

Hereof fail not, under the penalty of what the law directs.

To the marshal of the southern district of Illinois, to execute, and return in due form of law.

40 Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield, in said district, this twentieth day of July, in the year of our Lord one thousand eight hundred and seventy-six, and of our independence the one hundred and first year.

[L. S.] J. A. JONES, *Clerk.*

Return of Marshal.

I executed this writ on the 22nd day of July, 1876, by delivering a true copy thereof to William B. Galbreath, collector of Coles county, Illinois; also, on the 22d day of July 1876, by delivering a true copy thereof to William C. Miller, collector of Shelby county, Illinois; also, on the 22d day of July, 1876, on James T. Cooper, collector of Madison county, Illinois, by leaving a true copy thereof with Mrs. Cooper, wife of said James T. Cooper, for him; also, on the 24th day of July, 1876, by delivering a true copy of the same to James L. Vance, collector of Edgar county, Ills.; also, on
41 22d day of July, by delivering a true copy thereof to John Fishback, collector of the city of Alton, Illinois.

E. R. ROE, *Marshal*,
By N. B. PRETTYMAN, *Deputy*.

I further executed this writ, as follows: By delivering a true copy thereof to John H. Dunscomb, collector of Moultrie county, Ills., on the 24th, day of July, 1876; by delivering a true copy thereof to M. C. McWilliams, collector of Montgomery county, Ills., on the 24th day of July, 1876; by delivering a true copy thereof to Herman G. Weber, collector of St. Clair county, Illinois, on the 24th day of July, 1876, and by delivering a true copy thereof, on the 25th day of July, 1876, to L. B. Corbin, collector of Macoupin county, Illinois; also, by delivering a true copy thereof, on the 24th day of July, 1876, to the within named Amos A. Rhodes, collector of Christian county, Illinois—as shown by the returns of my special deputies upon copies of this writ returned into court herewith.

E. R. ROE, *Marshal*.

42 Service, $20; copies, $8..... 28
Mileage..... 26 10

$54 10

(Endorsed:) Filed August 5th, A. D. 1876. J. A. Jones, clerk.

And afterwards, to wit, on the 5th day of September, in the year last aforesaid, came said defendants, by their said solicitor, and filed in the office of the clerk of said court their answer in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF ILLINOIS, }

In the Circuit Court of the June Term, A. D. 1876.

The joint and several answers of James L. Vance, collector of Edgar county; William B. Galbreath, collector of Coles county;

John H. Dunscomb, collector of Moultrie county; William C. Miller, collector of Shelby county; Amos A. Rhodes, collector
43 of Christian county; M. C. McWilliams, collector of Montgomery county; L. B. Corbin, collector of Macoupin county; James T. Cooper, collector of Madison county; H. G. Weber, collector of St. Clair county; and John Fishback, collector of the city of Alton, to the bill of complaint of the Indianapolis and St. Louis Railroad Company.

These defendants saving to themselves all right of exception to the manifest errors, uncertainties, and insufficiencies in the complainant's bill of complaint contained, for answer thereto, or such parts thereof as defendants are advised it is necessary or material they should answer, say:

That they admit that the Indianapolis and St. Louis Railroad Company was originally a corporation organized under the laws of the State of Indiana, and having its general office at the city of Indianapolis in the State of Indiana, as stated in the bill.

And defendants aver that by virtue of a certain act of the general assembly of the State of Illinois, entitled "An act relating to the Indianapolis and St. Louis Railroad Company, and to
44 authorize extension of said railroad," approved March 10, 1869, it was enacted as follows:

Section 1. "That the lease of the St. Louis, Alton and Terre Haute Railroad Company, and the property and road thereof, to the Indianapolis and St. Louis Railroad Company, under which the railroad extending from Terre Haute, in the State of Indiana, to East St. Louis, in the State of Illinois, is now operated, be and stand confirmed, according to the terms of said lease; provided, however, that nothing in this act shall be construed to release the said lessor from any debt, cause of action, or contract now existing against them."

Section 2. "The said lessees, their associates, successors, and assigns shall be a railroad corporation in this state, under the style of 'The Indianapolis and St. Louis Railroad Company,' and shall possess the same, or as large powers as are possessed by said lessor corporation, and such other powers as are usual to railroad corporations. Said Indianapolis and St. Louis Railroad Company may and
45 are hereby authorized to extend their said line of road from any point on the same between the cities of Pana and Litchfield, on said road, or from either of said points westward to the Mississippi river opposite Louisiana, or any point below not exceeding fifteen (15) miles in the State of Missouri, with a branch thereof to the city of Quincy, in the State of Illinois, and the same to connect with the railroad bridge over said river at said city of Quincy."—(Private Laws of 1869, vol. 3, p. 316.)

That as defendants are informed and believe the said Indianapolis and St. Louis R. R. Co. accepted and acted under said act of April 10, 1869, *and thereby became and have ever since continued to be*

in this state a corporation organized and existing under the laws of the State of Illinois.

Defendants admit that said Indianapolis and St. Louis R. R. Company did, at the time and in the manner in the bill stated, lease from the St. Louis, Alton & Terre Haute Railroad Company the certain lines of railroad and appurtenances thereto belonging, situate in the State of Illinois, described in the lease, a
46 copy of which is filed with the bill and marked as exhibit "B," which is the same lease referred to and confirmed by said act of the general assembly of March 10, 1869, above mentioned, and defendants admit that complainant has held, operated, and maintained said leased line from thence hitherto.

Defendants admit that complainant did make returns of its tangible property for the years 1873, 1874, and 1875.

Defendants further admit that the state board of equalization of the State of Illinois met in the years 1873, 1874, and 1875, at the times provided by law, and that said board did, in pursuance of the statute, assess the property of railroad corporations in the State of Illinois; and defendants show to the court that the said state board assessed the various kinds of railroad property under the designations "railroad track," "rolling stock," and "capital stock," and that in pursuance of the statute the assessed value of the "capital stock, including franchise" over and above the assessed
47 and equalized value of the tangible property was distributed to the various counties into or through which the line of railroad extended in the proportion that the length of main line in any county bore to the length of the entire line.

Defendants further show unto your honor, that by the terms of the lease aforesaid entered into between the St. Louis, Alton and Terre Haute R. R. Company and the Indianapolis and St. Louis Railroad Company, and a copy of which is filed with the bill as Exhibit "B," the said Indianapolis and St. Louis R. R. Co. was at all times during the term of said lease to "pay any and all taxes, assessments, and imposts," of whatever kind, which should at any time during the term of said lease be charged, levied, assessed, or imposed upon the line of said road leased by it, or upon either or any part of railroad or its appurtenances so leased by it, or that might be charged against the said St. Louis, Alton and Terre Haute Railroad Company by reason of its ownership of said leased road or any part thereof.

48 Defendants further show to the court that the state board of equalization in pursuance of the statute assessed the value of the capital stock and franchises of the various railroad companies in the State of Illinois, including the said St. Louis, Alton and Terre Haute Railroad Company, and distributed the ascertained value of the capital stock, including the franchise over and above the value of the tangible property, to the various counties into or through which said lines of railroad extended in accordance with the proportion that the number of miles of main track in the several

counties bore to length of the entire lines of each road respectively, and that in pursuance thereof there was distributed as capital stock assessment of the St. Louis, Alton and Terre Haute R. R. Company for the portion of the line leased by the Indianapolis and St. Louis Railroad Company for the year 1873, the sum of $2,919,184; for the year 1874, the sum of $1,125,139; and for the year 1875, the sum of $1,004,416; upon which assessments of the property of the St. Louis, Alton and Terre Haute R. R Co., in the counties
49 through which the line leased by the Indianapolis and St. Louis R. R. Co., the various state, county, school, and other municipal taxes were levied. And defendants further show unto your honor, that the taxes levied upon said assessments were under and in pursuance of the terms of said lease aforesaid charged to the Indianapolis and St. Louis Railroad Company; and defendants deny all and singular the allegations in the bill of complaint to the effect that said taxes were so levied, in whole or in part, as a tax upon the capital stock including the franchise of the Indianapolis and St. Louis Railroad Company; but were and are only the taxes levied upon the property and capital stock of the St. Louis, Alton and Terre Haute R. R. Co., in said counties leased as aforesaid and charged to the Indianapolis and St. Louis Railroad Company.

Defendants further state that the said St. Louis, Alton and Terre Haute Railroad Company is and was a corporation created, organized, and existing under the laws of the State of Illinois.

Defendants further show unto your honor, that by their
50 sworn return to the auditor of public accounts the Indianapolis and St. Louis R. R. Company did not make any return of its own capital stock, but in lieu of such return made the following endorsement upon the blank furnished for the return of capital stock, to wit:

"The Indianapolis and St. Louis Railroad Company has no interest in the capital stock of the St. Louis, Alton and Terre Haute Railroad Co., and its officers have no knowledge of the amount of such capital stock.

"This information should be furnished by the corporate officers of St. L., A. & T. H. R. R. Company."

And also, instead of returning the indebtedness of said company, made the following statement, to wit: "The Indianapolis and St. Louis Railroad Company has no knowledge of the amount of the indebtedness of the St. Louis, Alton & Terre Haute R. R. Co. For information refer to said road."

And that the said St. Louis, Alton and Terre Haute Railroad Company, in making its returns to the said auditor of pub-
51 lic accounts endorsed upon the sheet upon which the return of its capital stock and indebtedness was made the following, to wit:

"N. B. This report refers to the road operated by the St. Louis, Alton and Terre Haute Railroad Company, except the foregoing

statement of stock and bonds, *that* having reference to all the road owned by said company, of which the main line (189 miles) and Alton branch (4 miles) are leased to and operated by the Indianapolis and St. Louis R. R. Company, and to which latter company the taxes thereon should be assessed, as by the terms of said lease said latter company covenanted to pay ALL taxes assessed against the St. Louis, Alton and Terre Haute Railroad Company by reason of its ownership of said property," as will more fully appear from said return, or certified copies thereof to be produced, as this court shall direct.

Defendants further state to the court that said assessment of the capital stock of the said St. Louis, Alton and Terre Haute and the the distribution thereof as aforesaid was based upon the
52 information contained in said returns of said railroad corporations respectively.

And the said defendants insist and submit to the court that the matters and things averred and stated in said complainant's bill of complaint are insufficient to entitle it to the relief sought thereby, and that said bill is defective for want of equity upon its face, and these defendants ask the same benefits from this defence as they would be entitled to had they demurred to said bill.

And the said defendants deny all manner of unlawful combination and confederacy, wherewith they are in said bill charged, without this that there is any other matter, cause, or thing in said bill of complaint contained material or necessary for them to answer unto and not herein and hereby well and sufficiently answered, traversed, and avoided or denied, that is true to the knowledge and belief of these defendants. All of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be
53 hence dismissed with their reasonable charges and costs in this behalf most wrongfully sustained.

JAS. K. EDSALL,
Attorney-General of Ill., for Defendants.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF ILLINOIS. } *ss.*

Charles E. Lippincott, being duly sworn, says that he was the auditor of public accounts of the State of Illinois and chairman of the state board of equalization of said state for the years A. D. 1873, 1874 and 1875; that he has heard the foregoing answer read and knows the contents thereof, and that the same is true in substance and in fact, except as to matters therein stated on information and belief, and as to those matters he believes them to be true.

Affiant further states that the state board of equalization did not for either of said years 1873, 1874 and 1875 assess the said Indianapolis and St. Louis Railroad Company upon its capital stock, but that said state board did assess the St. Louis, Alton and

54 Terre Haute Railroad Company upon its capital stock, and such portion of the capital stock assessment of said last named company as pertained to and was distributed to that part of its line of road leased and operated by the said Indianapolis and St. Louis Railroad Company was charged against said last named company, as will more fully appear from the proceedings of the state board in that behalf for the year 1873, pp. 153 and 155.

C. E. LIPPINCOTT.

Subscribed and sworn to before me, this 25th day of August, A. D. 1876.

[L. S.] LOTUS NILES, *Notary Public.*

(Endorsed:) Filed September 5, 1876. J. A. Jones, clerk.

And afterwards, to wit, on said 5th day of September, in the year aforesaid, came said defendants, by their said solicitor, and filed in said clerk's office their certain affidavit in said cause, which said affidavit is in the words and figures following, to wit:

55 *Affidavit of Miles.*

UNITED STATES OF AMERICA, }
NORTHERN DISTRICT OF ILLINOIS, } *ss.*

THE INDIANAPOLIS AND ST. LOUIS R. R. COMPANY, }
vs. }
JAMES L. VANCE ET AL. }

R. W. Miles, being duly sworn, says that he was and is a member of the state board of equalization of the State of Illinois for the years 1873, 1874 and 1875, and that during said years he was chairman of the committee "on assessment of capital stock of corporations" of said board.

Affiant further states that the state board of equalization did not for either of the said years 1873, 1874 and 1875 assess the said Indianapolis and St. Louis R. R. Co. upon its capital stock, but that the said state board did assess the St. Louis, Alton and Terre Haute Railroad Company upon its capital stock, and that such portion of the capital stock assessment of the last named company as pertained to and was distributed to that portion of its line leased
56 and operated by the Indianapolis and St. Louis R. R. Company was charged against said last named company.

R. W. MILES.

Sworn and subscribed to before me, this 24th day of August, A. D. 1876.

[L. S.] LOTUS NILES, *Notary Public.*

(Endorsed:) Filed September 5th, 1876. J. A. Jones, clerk.

And then afterwards, to wit, on the 21st day of October, in the year aforesaid, came said complainant, by its said solicitors, and filed in said clerk's office its amended bill in said cause, which said amended bill is in the words and figures following, to wit:

Amended Bill.

United States Circuit Court, Southern District of Illinois.

INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY, Complainant, *vs.* JAMES L. VANCE ET AL., DEFENDANTS. } Amended bill.

57 And your orator further shows that two years after the execution of the lease herein referred to and filed as an exhibit with this bill, and two years after said complainant had taken possession of and operated, by virtue of said lease, the said St. Louis, Alton & Terre Haute railroad, the general assembly of the State of Illinois passed an act in words and figures following, to wit:

In force March 11th, 1869.

An act relating to the Indianapolis & St. Louis Railroad Company, and to authorize extension of said railroad.

Section 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that the lease of the St. Louis, Alton and Terre Haute Railroad Company, and the property and road thereof, to the Indianapolis and St. Louis Railroad Company, under which the railroad extending from Terre Haute, in the State of Indiana, to East St. Louis, in the State of Illinois, is now operated, be and stand confirmed, according to the terms of said

58 lease; *Provided, however*, that nothing in this act shall be construed to release the said lessors from any debt, cause of action, or contract now existing against them.

Sec. 2. The said lessees, their associates, successors, and assigns shall be a railroad corporation in this state, under the said style of "The Indianapolis and St. Louis Railroad Company," and shall possess the same or as large powers as are possessed by said lessor corporation, and such other powers as are usual to railroad corporations. Said Indianapolis and St. Louis Railroad Company may, and are hereby, authorized to extend said line of road from any point on the same between the cities of Pana and Litchfield, on said road, or from either of said points westward to the Mississippi river opposite Louisiana, or any point below, not exceeding fifteen (15) miles, in the State of Missouri, with a branch thereof to the city of Quincy, in the State of Illinois, and the same to connect with the railroad bridge over said river at said city of Quincy.

Sec. 3. This act to take effect and be in force from and after its passage.

59 Approved March 10th, 1869.

And that neither before or after the passage of said act did the stockholders or officers of the complainant, nor any other persons connected with the Indianapolis & St. Louis Railroad Company, organize, subscribe for stock, elect officers, or do any other act to

incorporate under said Illinois statute, and that no capital stock of the corporation referred to in said act was ever subscribed by the lessees referred to in aforesaid lease and act; neither did said corporation at any time issue any share or shares of capital stock, but have continued to operate said Indianapolis and St. Louis railroad the same since the passage of said act as before, and that all the capital stock owned by the complainant is the capital stock subscribed to and issued by the Indianapolis and St. Louis Railroad Company, a corporation existing under the laws of Indiana, and having its principal office in said state.

THE INDIANAPOLIS & ST. LOUIS R. R. CO.,
By B. W. HANNA.
H. P. BUXTON.
Solicitors.

60 STATE OF ILLINOIS, } ss.
SANGAMON COUNTY, }

B. W. Hanna, being duly sworn, deposes and says that he is the agent and attorney of the above-named Indianapolis and St. Louis Railroad Company; that he has read the above amended bill, and that the facts therein stated are true in substance and fact, and that he is authorized by said complainant to cause said bill to be filed; and further says not.

B. W. HANNA.

Subscribed and sworn to before me, this 20th day of October, 1876.
S. H. TREAT, *Dist. Judge.*

(Endorsed:) Filed October 21, 1876. J. A. Jones, clerk.

And then afterwards, to wit, on Friday, the 23d day of March, at the January term of said court, in the year of our Lord eighteen hundred and seventy-seven, the following further proceedings
61 were had in said court in said entitled cause, and entered of record, to wit:

Decree.

INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY
vs.
JAMES L. VANCE, COLLECTOR OF EDGAR COUNTY; WILLIAM B. GALBREATH, COLLECTOR OF COLES COUNTY; JOHN H. DUNSCOMB, COLLECTOR OF MOULTRIE COUNTY; WILLIAM C. MILLER, COLLECTOR OF SHELBY COUNTY; AMOS A. RHODES, COLLECTOR OF CHRISTIAN COUNTY; M. C. MCWILLIAMS, COLLECTOR OF MONTGOMERY COUNTY; L. B. CORBIN, COLLECTOR OF MACOUPIN COUNTY; JAMES T. COOPER, COLLECTOR OF MADISON COUNTY; H. G. WEBER, COLLECTOR OF ST. CLAIR COUNTY, AND JOHN FISCHBACK, COLLECTOR OF CITY OF ALTON. } In Chancery.

Upon this day, by agreement of parties, this cause is submitted to the court for final hearing upon bill, amended bill (to which answer is extended by consent), answer, and exhibits filed herein, and the court being sufficiently advised in the premises doth order, adjudge and decree that the injunction heretofore granted in this cause be dissolved and that the complainant's bill be
62 dismissed, and that the complainant pay the costs of this suit to be taxed, from which decree the said complainant prays an appeal to the Supreme Court of the United States, and that such appeal be made a supersedeas and operate as a stay of the collection of the taxes heretofore enjoined and of all proceedings in the premises, which is granted by the court upon the condition the complainant within thirty days from this date file an appeal bond to the defendants, and their successors in office, with good and sufficient sureties, to be approved by the clerk, in the penal sum of one hundred thousand dollars, conditioned for the payment of the taxes, the collection of which was heretofore enjoined in this cause, and that the complainant will pay and answer all costs if it shall fail to make good its said appeal. It is further ordered by the court, the counsel for the respective parties thereto consenting, that the printed books containing the proceedings of the state board of equalization for the years 1873, 1874 and 1875, referred to in the original bill as exhibits "F," "G" and "H," and also the printed pamphlet
63 containing the articles of incorporation and lease referred to in said bill as exhibit "A" and "B" respectively, be sent up and transmitted to the Supreme Court of the United States, in lieu of copies thereof, and that they be omitted from the transcript to be made by the clerk, and that any of such documents may be referred to and used by either party in the Supreme Court with like effect as if the same had been copied into the transcript of the record.

And afterwards, to wit, on the 11th day of April, in the year last aforesaid, came said complainant, by its said solicitors, and filed in the office of the clerk of said court its appeal bond in said cause, which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents, that the Indianapolis and St. Louis Railroad Company, a corporation organized and existing under the laws of the State of Indiana, principal, and C. M. Dole and Samuel Smith, of the county of Coles and State of Illinois,
64 sureties, are held and firmly bound unto James L. Vance, collector of Edgar county, Wm. B. Galbreath, collector of Coles county; John H. Dunscomb, collector of Moultrie county; William C. Miller, collector of Shelby county; Amos A. Rhodes, collector of Christian county; M. C. McWilliams, collector of Montgomery county; L. B. Corbin, collector of Macoupin county;

James T. Cooper, collector of Madison county; H. G. Weber, collector of St. Clair county; John Fischback, collector of the city of Alton, and their successors in office, all in the State of Illinois, in the penal sum of one hundred thousand dollars ($100,000), for the payment of which well and truly to be made, we and each of us bind ourselves, our successors, heirs, executors, administrators, and assigns, jointly, severally, and firmly by these presents.

In witness whereof we have hereunto set our hands and seals, this 28th day of March, A. D. 1877.

The condition of the above obligation is such that, whereas at the January term, A. D. 1877, of the Circuit Court of the United States for the Southern District of Illinois, in a certain cause pend-
65 ing in said court on a bill in chancery, exhibited by the said railroad company against the above-named obligees, to enjoin the collection of certain taxes described in said bill, the said obligees did obtain an order and decree of said court, dated March 23rd, 1877, dissolving the injunction theretofore granted in said cause, and dismissing said bill at the said complainant's cost, from which decree the said railroad company has prayed an appeal to the Supreme Court of the United States, and that such appeal be made a supersedeas and operate as a stay of the collection of the said taxes, and of all proceedings in the premises, which was granted by the court upon the condition that the said railroad company file a bond as is provided in said decree. Now, if the said Indianapolis and St. Louis Railroad Company shall well and truly pay or cause to be paid the said taxes heretofore enjoined in said cause, and all such damages and costs as may be awarded against it, if it shall fail to make good its said appeal, then this obligation shall be void, otherwise to be and remain in full force and effect.

66 THE INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY.

[L. S.] By H. B. HURLBUT, *President.* [SEAL.]

Attest: E. KING, *Secretary.*

C. M. DOLE. [SEAL.]

SAMUEL SMITH. [SEAL.]

Approved this 11th day of April, A. D. 1877.

J. A. JONES, *Clerk.*

(Endorsed:) Filed April 11th, A. D. 1877. J. A. Jones, clerk.

Certificates.

UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF ILLINOIS, } ss.

I, *John A. Jones*, Clerk of the Circuit Court of the United States in and for said Southern District of Illinois, do hereby certify that the foregoing is a *full, true, and complete copy* of all the papers filed

and proceedings had thereon in a certain cause lately pending in said court, wherein the Indianapolis and St. Louis Railroad Company is *complainant* and James L. Vance, collector of Edgar county; William B. Galbreath, collector of Coles county; John H.
67 Dunscomb, collector of Moultrie county; William C. Miller, collector of Shelby county; Amos A. Rhodes, collector of Christian county; M. C. McWilliams, collector of Montgomery county; L. B. Corbin, collector of Macoupin county; James T. Cooper, collector of Madison county; H. G. Weber, collector of St. Clair county; and John Fischback, collector of the city of Alton, are *defendants*, as the same appear of record in my said office.

I do certify that the printed exhibits marked "B," "F," "G," & "H," herewith transmitted, are the same referred to in the bill and decree in said cause.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said court, at Springfield, in said district, this 25th day of August, in the year of our Lord eighteen hundred and seventy-seven, and of our independence the one hundred and second year.

[SEAL.] J. A. JONES, *Clerk*.

68 In the Supreme Court of the United States. October term, 1877.

INDIANAPOLIS AND ST. LOUIS RAILROAD COMP'Y, APPELLANT, *vs.* JAMES L. VANCE ET AL., COUNTY COLLECTOR, AND JOHN Fischback, Collector of City of Alton, Appellees. } No. 896.

It is hereby stipulated by the counsel for the respective parties that the printed pamphlets annexed to this record as exhibits "B" "F," "G," and "H," containing respectively the articles of association of the Indianapolis and St. Louis Railroad Company, and the contract or lease between that company and the St. Louis, Alton, and Terre Haute R. R. Co., and the proceedings of the State Board of Equalization of the State of Illinois for the years 1873, 1874, and 1875 may be omitted in printing the record. But that either party may, in their briefs, print such extracts from said exhibits as they may deem necessary to a proper presentation of the case.

Dated October 16th, 1877.

B. W. HANNA,
Counsel for Appellants.
JAS. K. EDSALL,
Attorney-General of Ill., for Appellees.

69 (Endorsed:) Supreme Court U. S. 1877, October term. No. 896. The Indianapolis and St. Louis R. R. Co. vs. James L. Vance, collector, &c. Stipulation in regard to printing record. Filed 16th October, 1877.

Supreme Court of the United States.

THE INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY, Appellant,

vs.

JAMES L. VANCE, ET AL., Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF ILLINOIS.

BRIEF FOR APPELLANT IN 896.

BY R. P. RANNEY, and B. W. HANNA.

Filed January , 1878.

Supreme Court of the United States.

THE INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY, Appellant,

vs.

JAMES L. VANCE, ET AL, Appellees.

STATEMENT.

The appellant is a railroad corporation, organized and existing under and by virtue of the laws of Indiana, and prior to September 11, 1867, owned and operated a railroad extending from Indianapolis to the State line of Illinois. At that date, it leased a line of railroad belonging to the St. Louis, Alton & Terre Haute Company, a corporation formed in Illinois, extending from the terminus of its own road, across the State of Illinois, together with a short branch terminating on the Mississippi, at Alton, and has since operated this leased line in connection with its own road.

About two years thereafter, some question having arisen as to the legality of this lease, the General Assembly of Illinois passed the special act of March 10, 1869, which is copied on page 24 of the printed record. By the first section of this act, it was provided, that the lease under which the line was then operated,

should "be and stand confirmed, according to the terms of said lease;" and by the second, that "the said lessees, their associates, successors and assigns should be a railroad corporation in this State, under the said style of the Indianapolis & St. Louis Railroad Company, and should possess the same, or as large powers as are possessed by said lessor corporation, and such other powers as are usual to railroad corporations." It also gave the authority to extend the line from and to the points particularly named in this section. The act took effect from its passage.

The amended bill avers, that "neither before, or after the passage of said act, did the stockholders, or officers of the complainant, nor any other persons connected with the Indianapolis and St. Louis Railroad Company, organize, subscribe for stock, elect officers, or do any other act, to incorporate under said Illinois statute, and that no capital stock, of the corporation referred to in said act, was ever subscribed by the lessees referred to in the aforesaid lease and act; neither did said corporation, at any time, issue any share, or shares of capital stock, but has continued to operate said Indianapolis & St. Louis Railroad, the same since the passage of said act, as before, and that all the capital stock owned by the complainant, is the capital stock subscribed to, and issued by, the Indianapolis & St. Louis Railroad Company, a corporation existing under the laws of Indiana, and having its principal office in said State."

The bill further states, that the appellant, as required by the laws of the State of Illinois, returned to the Auditor of Public Accounts, true and correct schedules of all the property it possessed in said State, on the first day of May, in each of the years, 1873,—4 and 5, copies of which are filed with the bill, made part thereof, and marked Exhibits "C," "D," and "E," and are found on pages 15 to 20 of the printed record, which embrace all the tangible property possessed, or used by the appellant in the State of Illinois. That the Board of Equalization,

convened in that State for those years, to whom these returns were submitted, assessed against the appellant, on its capital stock, for the year 1873, $2,919,184—for 1874, $1,125,139—and for 1875, $1,004,416; that these sums were certified to the County Clerks of the several counties, through which said leased line runs, who have extended taxes thereon against the appellant, and placed warrants, for the collection of the same, in the hands of the collectors of said counties, who threaten to levy the same upon the property of the appellant, and to make sale thereof.

The amount of taxes thus assessed, amounts in the aggregate to $76,464.35, and is distributed between said counties, in the proportions shown by exhibit "I," filed with the bill, and found on pages 20 and 21 of the printed record. These collectors, thus holding warrants, are made respondents to the bill. It is averred that these assessments of the capital stock of the appellant, are unjust, illegal and void, and made without authority of law; that it will be irreparably injured if said taxes are collected by sale of its property, and that a demand of the same is a perpetual cloud thereon; that the complainant fears, that unless restrained, said collectors will levy on its property, and sell the same for said taxes, so illegally assessed.

On the 20th day of July, 1876, a preliminary injunction was allowed by the Circuit Court, and on the 5th day of September following, the respondents filed their answer.

The answer expressly admits nearly all the material averments of the bill, and expressly denies but a single one. It, however, recites again the special act, copied at length in the amendment to the bill, and the respondents aver, that "as they are informed and believe," the complainant "accepted and acted under said act of April 10, 1869, and thereby became and have ever since continued to be in this State a corporation organized and existing under the laws of the State of Illinois."

They further show that by the terms of the lease, appended to

the bill as exhibit "B," and found on page 14, Art. X, of the lease, the complainant agreed to pay all taxes, assessments and imposts which might be levied upon the leased line, or that might be charged against the lessor, "by reason of its ownership of said leased road, or any part thereof." And that the assessments made, and taxes levied, were not upon the capital stock and franchise included, of the complainant, but upon so much of the stock and franchise of the lessor company (being an Illinois corporation) as represented the portion of its road leased to the complainant, and which was charged against the complainant, because of its contract obligation to the lessor company, to pay all taxes, &c., as before stated. That the assessment was made upon information furnished by both companies —the complainant endorsing upon the blank furnished to it for the return of capital stock, that it had no interest in the capital stock of the lessor company, and that its officers had no knowledge of the amount of such stock, or of the indebtedness of that company; and referred to it for information—and the St. Louis, Alton & Terre Haute Company, in making its own returns, endorsing upon a like blank this:

"N. B. This report refers to the road operated by the St. Louis, Alton & Terre Haute Railroad Company, except the foregoing statement of stock and bonds, *that* having reference to all the road owned by said Company, of which the main line (189 miles) and Alton branch (4 miles) are leased to, and operated by, the Indianapolis & St. Louis R. R. Company, and to which latter Company the taxes thereon should be assessed, as by the terms of said lease said latter Company covenanted to pay all taxes assessed against the St. Louis, Alton & Terre Haute Railroad Company, by reason of its ownership of said property."

By the proceedings of the State Board of Equalization for the year 1873, Exhibit "F," of the bill, at page 151 of the publish-

ed record of the Board, there is found "A tabular statement of the assessment of the Capital Stock of Railroad Companies." And at page 153 of said published record, is the following entry, relating to the Indianapolis & St. Louis Railroad Company:

TABLE "A."—CONTINUED.

NAME OF COMPANY AND COUNTIES.	Length of Main Track in Feet.	Distribution of Capital Stock to Counties.	Total Assessment of Capital Stock.
Indianapolis & St. Louis (see note at bottom of page 155).			
Edgar	132,000	$398,796	
Coles	147,000	446,651	
Moultrie	21,000	63,807	
Shelby	142,560	430,699	
Christian	58,080	175,470	
Montgomery	179,520	542,362	
Macoupin	105,600	319,037	
Madison	166,320	502,483	
St. Clair	13,200	39,879	
	966,240		$2,919,184

And at page 155 of said published record is also the following entry, relating to the St. Louis, Alton & Terre Haute Railroad Company:

TABLE "A."—CONTINUED.

NAME OF COMPANY AND COUNTIES.	Length of Main Track in Feet	Distribution of Capital Stock to Counties	Total Assessment of Capital Stock
St. Louis, Alton & Terre Haute			$2,919,184
Belleville & Southern Illinois			760,274
St. Clair	216,959	$542,140	
Randolph	34,625	72,158	
Perry	117,552	244,976	
	369,136	$760,274	

* Distributed to counties on the line of the Indianapolis & St. Louis.
† Distributed to counties on the line of the St. Louis, Alton & Terre Haute.

By the Proceedings of the State Board of Equalization for the Year 1874, Exhibit "G" of the Bill, at page 80 of the published Record, there is found—

TABLE "A,"

Showing the Assessment made by the State Board of Equalization on the Capital Stock of Railroads.

Accompanying and made part of the Report of the Committee on Assessment of Capital Stock of Corporations.

Name of Company.	Capital Stock Paid Up.		Total Indebtedness, except for current expenses		Market or Actual Value of Paid Up Capital Stock and Debt, as determined by the State Board.	Capital Stock and Debt as Equalized with the Aggregate Assessment of the State, by Deducting 40 per cent. of Market or Actual Value.	Total Equalized Value of Taxable Property assessed by State Board, and in Counties.	Assessed and Equalized Value of Capital Stock, being Excess of Equalized Value of Capital Stock and Debt over Equalized Value of Tangible Property.
	Total.	Proportion in Illinois.	Total	Proportion in Illinois.				
Indianapolis & St. Louis, and St. Louis, Alton & Terre Haute	Pro rata.	By mil'ge			$4,500,702	$2,705,873	$1,580,736	$1,125,136
St. Louis, Alton & Terre Haute	$4,768,100	$4,344,881	$7,000,000	$6,675,000	1,725,057	1,035,034	646,791	388,243

Also, by Proceedings of the State Board of Equalization for the Year 1875, Exhibit "H" of the Bill, at page 64 of the published Record, will be found—

TABLE "A."

Showing the Assessment made by the State Board of Equalization on the Capital Stock of Railroads.

Accompanying and made part of the Report of the Committee on Assessment of Capital Stock of Corporations.

Name of Company.	Capital Stock Paid Up.		Total Indebtedness, except for current expenses.		Market or Actual Value of Paid Up Capital Stock and Debt, as determined by the State Board.	Capital Stock and Debt as Equalized with the Aggregate Assessment of the State, by Deducting 50 per cent. of Market or Actual Value.	Total Equalized Value of Tangible Property assessed by State Board, and in Counties.	Assessed and Equalized Value of Capital Stock, being Excess of Equalized Value of Capital Stock and Debt over Equalized Value of Tangible Property.
	Total	Proportion in Illinois.	Total	Proportion in Illinois.				
Indianapolis & St. Louis	.....	.....	.....	.....	$4,509,702	$2,254,896	$1,250,480	$1,004,416
St. Louis, Alton & Terre Haute	$4,768,000	$4,544,881	$7,000,000	$6,675,000	1,725,067	862,529	569,161	293,368

It is thus seen that the whole controversy in the case, relates to the taxes imposed upon *Capital Stock*, the taxes upon all other property being returned in separate schedules, and regularly assessed, and long since paid. And the only questions arising, would seem to be, 1st, the legal effect, and proper construction, of the special act of March 10, 1869; and, 2d, the regularity and legality of taxing the appellant upon its stock, or if the matter shall so properly appear, upon a proportion of the stock of the St. Louis, Alton & Terre Haute R. R. Company.

ASSIGNMENT OF ERRORS.

And thereupon, on the case thus stated, the appellant assigns for Error and insists:

1st. That the Circuit Court erred in holding and deciding that its stock was subject to taxation under the laws of Illinois; it being a corporation foreign to that State, and subject to taxation there, only, upon the tangible property it there used, or employed.

2d. The said Court erred in holding and deciding that said special act of the Legislature of Illinois, of March 10, 1869, without any organization effected, or stock subscribed, in that State, constituted the appellant a corporation of that State.

3d. The said Court erred in holding that the Records of Proceedings of the said State Board of Equalization could be so contradicted, changed, or interpreted, as to import an assessment of a part of the capital stock of the St. Louis, Alton & Terre Haute R. R. Company, to be charged against the appellant, by reason of the said contract to pay taxes on that part of the road of said Company, so leased by it.

4th. The said Court erred in holding and deciding that the said Board of Equalization had any jurisdiction, power or authority to assess against the appellant, or distribute to the counties to extend taxes thereon, the whole or any part of the capital stock of the St. Louis, Alton & Terre Haute R R. Company, either for the reason above stated, or for any other reason whatever.

5th. Said Board of Equalization had no power or authority, as between the appellant and said St. Louis, Alton & Terre Haute R. R. Company, to consider or decide upon the existence of any such contract, or the extent of the obligations it imposed, or its breach if any should be claimed; or, in effect, to render

judgment thereon and award execution therefor. These all being judicial functions, to be exercised only by a competent court, with the proper parties before it.

6th. The said Court erred in holding that the laws of Illinois gave any authority whatever to said Board, to apportion the assessment of the capital stock of the said St. Louis, Alton & Terre Haute R. R. Company, so as to charge the taxes upon a part thereof against the said company, and the residue against the appellant.

7th. The said Board had no data or basis upon which to make any such apportionment: the stock representing all the values belonging to the Corporation, subject to its debts, an apportionment by distances would not correctly divide the stock.

8th. The said Court erred in holding and deciding upon the bill, amended bill, answer and exhibits, upon which only, the the cause was submitted to the Court, against the appellant, and in adjudging and decreeing that the injunction theretofore granted in the cause, should be dissolved, and the bill dismissed at the costs of the appellant; when upon the equities thereon arising, the said injunction should have been made perpetual.

ARGUMENT.

It cannot be necessary to cite authorities in this Court in support of the proposition, that the authority for levying taxes, and the distraint of property to pay them, must be found in the laws of the State, under whose sanction they are imposed, and that the agents upon whom this authority is conferred must, substantially at least, follow it, and comply with the conditions annexed to its exercise, before a tax can be legally levied and enforced. To accomplish this, the law making power must designate the objects of taxation, the agents by whose intervention the law is to be enforced, and the steps necessary to be taken, in order that the tax may be regularly and legally imposed. So much, at least, is due to the inviolability of private property, and to that reasonable measure of security for private interests, which a government of law is supposed to afford.

In the light of these obvious principles, we proceed to the discussion of the questions which the record in this case presents; and we think we shall be able to show clearly, and briefly we hope, that no law of the State of Illinois, has authorized the levy of any tax upon the *capital stock* of the appellant corporation; nor has any authority whatever been given to levy a tax *upon this corporation*, on account of the capital stock of any other company. As this cause originates in Illinois, and concerns taxes upon a railroad corporation, we will say at the outset, that we raise no questions that have yet been passed upon by this Court in any of the cases from that State. We take, as finally established, all that has been so far settled, and we are able to relieve ourselves of much labor, from the fact, that the statutes upon which the case depends, have recently been so critically examined by the Court.

I.

Our first position is, that the appellant is a corporation of the State of Indiana, with a stock subscribed and held under the authority of its laws, and with an organization there, and not elsewhere: and as such corporation, foreign to Illinois, is doing, with the express assent of the State of Illinois, a lawful business in that State.

This is no further controverted in the answer, than by bringing forward the special act of Illinois, already copied, and insisting that this act makes us *also* a corporation in Illinois. If this were true, so long as it stands conceded that our organization is made, and our stock held, under and in accordance with the laws of the foreign State, no right would arise to tax our stock in Illinois. But it is not true: and this act, when properly construed in reference to the objects intended to be attained, and the constitutional powers of the General Assembly of that State, amounts to nothing more than a license to the corporation of a sister State to exert its corporate powers in the State of Illinois, by holding and operating a line of leased railroad there.

The language of the act imports nothing more, and, so long as no corporate organization, or holding of a separate stock in that State was ever made, or contemplated, the *legal effect* of the act is precisely the same, whether it is regarded as a foreign corporation authorized to do business there, or, the foreign corporation, *as such*, is recognized as existing *in* that State. In either event it is there, as a corporate being simply, *without stock*, and only liable to be taxed upon such tangible property as it possesses or employs in that State.

II.

The proper construction and legal effect, of this special Act, are in principle settled by this Court in the case of the *Baltimore & Ohio R. R. Co.* vs. *Harris*, 12 Wal., 65, in considering an Act of Virginia involved in that case. This Act of Virginia, after reciting the Maryland Act, incorporating the Company, with authority to construct a road from Baltimore to the Ohio River, conferred upon the Company substantially the same powers and privileges within the State of Virginia as were conferred upon it in Maryland; and the Court held that no new corporation was created in Virginia, and in the opinion say:

"The permission was broad and comprehensive in its scope; but it was a license, and nothing more. It was given to the Maryland corporation as such, and that body was the same in all its elements and in its identity afterwards as before. In its name, locality, capital stock, the election and power of its officers, in the mode of declaring dividends, and doing all its business, its unity was unchanged; only the sphere of its operations was enlarged."

The Illinois Act must be construed in reference to the constitutional powers of the Legislature that enacted it; and upon the question whether it was intended to create a new corporation, or simply to confirm a lease to the Indiana corporation, and invest it with such powers as were necessary to enable it to enjoy the benefits of the confirmation, the Act should be construed so as to avoid conflict with the Constitution. The Supreme Court of Illinois, in *Porter* vs. *Railroad Co.*, 76 Ill. R., 572, state the principle as it is everywhere established. They say: "The rule of construction by which we must be governed in such cases is, to so construe the statute that the whole shall, if possible, stand. Potter's Dwarris on Stat., 189. And whenever an Act of the Legislature can be so construed and applied as to avoid conflict with the Constitution and give it

the force of law, such construction must be adopted. *Newland* vs. *March*, 19 Ill., 384."

But if any such construction is placed upon that Act as to make it an attempt to create a new corporation in Illinois, it is, to that extent, flatly repugnant to Sec. 1, Art. X, of the Constitution of 1848, then in force in that State. Rev. Stat. of Ill. of 1874, p. 53. That section provides:

"Corporations, not possessing banking powers or privileges, may be formed under *general laws, but shall not be created by special acts*, except for municipal purposes; and in cases where, *in the judgment of the General Assembly*, the objects of the corporation cannot be attained under general laws." No indication or statement is found in the Act, or elsewhere, showing that the General Assembly were of that opinion, or formed any *judgment* in respect to this enactment.

Its *judgment*, in the very nature of the trust confided to it, can only exist in its recorded proceedings; and we are informed the practice uniformly conformed to the principle, and in all cases where the Legislature undertook to *create* a corporation by a *special law*, they expressed, upon the face of the Act, their inability to accomplish the object by a general law. The absurdity of making such a statement in respect to this Act is apparent when it is remembered that, at the very time, a general law for the creation, organization and regulation of railroad companies was found upon the statute books. Scates, Treat & Blackwell's Compiled Statutes, Vol. II, p. 937.

The averment of the Bill that neither the officers or stockholders of the complainant ever did any act, or took any step to incorporate under this Act, or to create a stock in the State of Illinois, is not denied in the answer; and as it cannot be claimed that the stockholders of the original corporation in Indiana, could be made members of a corporation in Illinois, without their consent, it may be quite immaterial what the character of

the Act was. So long as it remained unexecuted, no corporation would result from its provisions, and the only operative part of it would be, the license of a foreign corporation to operate the leased road in that State.

But as we feel clear in the proposition, that the Act neither did, or was intended to create a corporation, and if it had, would have been unconstitutional and void, we insist that the appellant has always occupied the position of a foreign corporation, doing a business expressly allowed in the State of Illinois. If that is our *status*, the whole case, so far as it involves an attempt to levy a tax upon our stock, is disposed of by a late decision of the Supreme Court of Illinois.

The case of *Western Union Telegraph Co.* vs. *Leib*, 76 Ill. R., 172, originated in an attempt to assess taxes upon the capital stock of that Company, and involved a construction of the very statutory provisions here drawn in question. It appeared that the Telegraph Co. was a foreign corporation, "deriving its existence from the laws of the State of New York, but owning, operating, and controlling, lines of telegraph in this State." The Court say: "After a careful examination of the different sections of the Act bearing upon the question, we are unable to find any provision, which shows that telegraph companies are regarded in anywise differently, for the purpose of taxation, from other corporations." The Court then proceed to a critical examination of the various provisions of the Act, and especially the provision in section 53, requiring "any person, company or corporation, using or operating a telegraph line in this State," to make returns for the purpose of enabling the Board of Equalization to make a valuation of stock and franchise, to be distributed to the counties on the line, as in the case of the valuation of railroad stocks—and arriving at the conclusion, that the only authority to assess taxes upon capital stock is found in the 4th clause of section 3, in these words: "The capital stock

of all companies and associations, *now or hereafter created under the laws of this State, shall be so valued,*" &c., thus state their conclusions: "We are unable to find any authority in the Act, for assessing the capital stock of companies and associations doing business in this State, but incorporated under the laws of another State. The care manifested by the Legislature, whenever any allusion is made to the assessment of capital stock, to limit it to corporations *created by or under the laws of this State*, is so clear and positive, that no doubt can well exist as to the purpose intended." "The assessment upon the capital stock of appellant is not authorized by law, and the collection of the tax levied upon it must be enjoined." And thereupon the decree below was reversed and the cause was remanded, "with direction to that Court to enter a decree perpetually enjoining the collection of *so much of the appellant's taxes as is assessed upon its capital stock.*"

Upon the principle laid down by this Court in *State Railroad Tax Cases*, 92 U. S. R., 617, this decision of the State Court would seem to be decisive, both as to the right and remedy, and requires no further comment from us.

III.

Here the argument might properly close, perhaps, on the merits of the questions presented by our bill and amended bill; but the respondents place themselves upon the ground of denial that the Board of Equalization has made any assessment of complainant's stock, whether regarded as a foreign, or domestic corporation, and insist that they have charged against us the assessment of a part of the stock of the lessor company. It is claimed that the assessment was upon the St. Louis, Alton and Terre Haute Railroad capital stock.

We think an inspection of the recorded acts of the Board of Equalization will show that all the assessments we complain of, were made of the capital stock of the complainant, and we insist that affidavits cannot explain, modify, or change the acts. Might not a judge as reasonably explain by affidavit a judgment rendered in his court, and intended by the record to be made perpetual. These respondents must stand by the acts of the state, as shown by exhibits and not denied in their answer.

It is perfectly settled that parol evidence is not admissable, neither in aid, contradiction, or explanation of the records required to be made in levying the tax. *Lessee of Kellogg* vs. *McLaughlan*, 8 Ohio R. 116. *Lessee of Ward* vs. *Barrows*, 2 Ohio State R., 246. As remarked by Judge Hitchcock in the first of these cases, "it would be a dangerous principle to adopt, that tax titles may be sustained, partly by record and partly by parol proof. If the County Auditor had failed entirely to make the record required, as in the 31st section of the Act, it would hardly be contended, that parol proof of the facts therein required to be recorded, could be admitted. But no reason can be assigned against receiving such evidence, which may not with equal force, be assigned against receiving the evidence now offered."

By the laws of Illinois, every step in the assessment and levy of these taxes is required to be in writing, and made the subject

of public records. If allowed to be varied, or contradicted, by evidence, the greatest confusion and injustice would ensue.

Upon these assessments, as admitted, warrants for the collection of the controverted taxes have been issued against complainant and its property. We need not go behind these acts of the State officers, they entitle us to the injunction.

By these public records, there is nothing to indicate, that the assessment made, was not of the capital stock of the Appellant Co. And after the year 1873, no correction, by note, or otherwise, between that Company and the St. L. A. & T. H. Co. is anywhere found upon the record of the Board of Equalization.

We insist, that the case attempted to be made in the answer, to justify the taxes, levied against the Appellant Co., is wholly inadmissable, and demonstrates more clearly than the bill itself, the complete illegality of those taxes.

1. The answer admits that no valuation of the stock of the Appellant Co. has been made, and whether it is regarded as a foreign or domestic corporation, demonstrates the illegality of the taxes assessed against it.

2. It is demonstrably clear that the Appellant Co., has no interest in the stock of the Alton Co. That stock belongs to that Company, or its stockholders, while everything acquired by the lease to it, is the right to use the tangible property specified in the lease, together with such property as it may have since put upon the line. If, therefore, it is only to be taxed on such property as it owns, uses, or enjoys in the State of Illinois, it is clear that the taxes upon the stock of the Alton Co. must be excluded.

3. No authority whatever is given by the laws of Illinois to the State Board to assess the capital stock of a railroad company, created by the laws of that State, against any other person, or corporation; or to certify to the counties any such assessment, upon which to extend taxes, and issue warrants for the

collection thereof, against any other person, or corporation. On the contrary, the authority given, is expressly confined both by the law and rules adopted by the State Board, for ascertaining the value of the capital stock, to the companies and associations whose stock is thus valued.

4. There is no authority of law whatever, for dividing or apportioning, the assessment of the capital stock of the St. Louis, Alton & Terre Haute Railroad Company, assessing only a part thereof to that Company, and the residue to the Appellant. The 4th subdivision of the 3d section of the Act before cited, requires the Board to determine the fair cash value of the entire capital stock; including the franchise, over and above the assessed value of the tangible property of the Company; and the 110th section (Rev. Stats. Ill., p. 876), requires the *aggregate* amount of capital stock assessed by the Board, to be distributed to the counties.

5. It is not admitted, but positively denied, that we are under any contract obligations to the Alton Company to pay any taxes levied on its stock. We do not enter fully upon the examination of the proposition, for the reason that should have prevented the Board of Equalization from deciding the question between us, viz: that the Alton Company is not a party to these proceedings, and, consequently, has no opportunity to be heard. It is only necessary now to say that our understanding of the covenant in the lease, respecting taxes, binds us only to pay such taxes as are specifically imposed upon the leased property, or personally upon the lessor "by reason of its ownership of said leased road, or any part thereof." In short, that we were to pay taxes upon what was leased to us, and nothing more, whether those taxes were levied upon the property or upon the lessor. And as no stock was included in the property leased, no obligation to pay taxes upon it was created by this covenant.

6. But whether we are right or wrong in this construction, we cannot err in saying, that no power or authority, whatever, has been given to the State Board of Equalization, to hear or determine the questions which must necessarily arise before our liability is established, much less, behind the back of both companies, to proceed to enforce the supposed obligation by authorizing the issue of warrants to seize upon the property of the appellant. While the levying of taxes is conceded to be a legislative power, it will hardly be claimed, that the enforcement of contracts between parties, can be classed in that category. Every step, in such a process, is eminently and exclusively *judicial*, and can only be taken by such a tribunal, when it has the proper parties before it, and a full opportunity to be heard is afforded. The State of Illinois has made no attempt to invest its Board of Equalization with any such authority. The proceedings to assess property and collect taxes in Illinois are statutory, and cannot be used to settle rights of action between private persons, natural or corporate. The property must be assessed to the owners, and the warrants for the collection, issued against the property of such owners. The complainant, before its liability to the St. Louis, Alton & Terre Haute Company, to pay such taxes can be settled, has a right to a day in court, to be heard in defense of such claim, not only as to the construction of the agreement, but, also, as to any matter of defense having arisen subsequently. The St. L., A. & Terre Haute Co. is not a party to this action, and would not be bound by any decision rendered on the merits in the case.

The suggestions made in the answer, that the assessment was made upon information furnished by *both* companies, scarcely merits a moment's attention. The officers of appellant simply stated, that it had no interest in the stock of the other company, and that they had no knowledge of the amount of its

stock or indebtedness; and referred those who were seeking knowledge, upon that subject, to it for information.

It is true the Alton Company, upon one or more occasions, did suggest the levying of a part of its taxes against the appellant; but we do not think that has seriously affected its rights. If it should be held to do so, we think such suggestions would likely, in these times, become very frequent.

R. P. Ranney and
B. W. Hanna,

Solicitors for Appellant

No. 896.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1877.

THE INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY, *Appellant*,
vs.
JAMES L. VANCE, AND OTHERS, COUNTY COLLECTORS, AND JOHN FISHBACK, CITY COLLECTOR, *Appellees*.

BRIEF AND ARGUMENT FOR APPELLEES

JAMES K. EDSALL,

ATTORNEY GENERAL OF ILLINOIS.

FOR APPELLEES

SPRINGFIELD, ILL.:
D. W. LUSK, STATE PRINTER AND BINDER.
1877.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1877.

INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY,
Appellant,

v.

JAMES L. VANCE, Collector of Edgar county;
W. B. GALBREATH, Collector of Coles county;
J. H. DUNSCOMB, Collector of Moultrie county;
W. C. MILLER, Collector of Shelby county;
A. A. RHODES, Collector of Christian county;
M. C. MCWILLIAMS, Collector of Montgomery county;
L. B. CORBIN, Collector of Macoupin county;
JAMES T. COOPER, Collector of Madison county;
H. G. WEBER, Collector of St. Clair county; and
JOHN FISHBACK, Collector of the city of Alton,
Appellees.

STATEMENT OF CASE.

The bill of complaint filed by the Indianapolis and St. Louis Railroad Company, the appellant, on the twentieth of July, 1876, in the Circuit Court of the United States for the Southern District of Illinois, against the appellees, as defendants, shows that it was a corporation organized under the laws of the State of Indiana,

with power to build and operate a railroad from Indianapolis "to a point on the line dividing Indiana and Illinois at or near where the St. Louis, Alton and Terre Haute Railroad intersects the same."

Printed Record, p. 2.

The bill also shows that on the eleventh day of September, 1867, the Indianapolis and St. Louis Railroad Company, as party of the first part, and the St. Louis, Alton and Terre Haute Railroad Company, as party of the second part, entered into a certain lease or contract, made part of the bill as Exhibit "B," containing among other provisions the following:

"ARTICLE I.

"The said party of the first part shall, will, and may manage, operate, and carry on the business of a certain railroad belonging to the party of the second part, and known as the principal or main line of the St. Louis, Alton and Terre Haute Railroad, extending from Terre Haute, in the State of Indiana, to East St. Louis (or Illinoistown), in the said State of Illinois, and also a certain branch thereof belonging to the party of the second part, and extending from a point on the said main line to Alton, in the said State of Illinois, for and during the period of ninety-nine years from the first day of June in the present year of our Lord one thousand eight hundred and sixty-seven, upon and subject to the terms and conditions of this indenture, and all and singular the provisions herein contained." * * * * * * * * * *

"ARTICLE X.

"The said party of the first part, its successors and assigns, shall and will at all times during the term aforesaid, pay or cause to be paid any and all taxes, assessments, and imposts of whatever kind which shall or may at any time during such term be charged, levied, assessed, or imposed upon the said main line of said railroad and the said Alton branch thereof, or upon either or any part of either of the said railroads or their appurtenances, or upon any business or transactions done upon them or either of them, or upon any income arising therefrom, or upon any property whatsoever, the use of which during said term is hereby agreed to be furnished to the party of the first part, or which may be charged against or imposed upon the said party of the second part, its successors or assigns, for or on account of its or their ownership of the said railroads, or either or any part of either thereof, or of such property or any part thereof: *Provided, however*, that nothing in this contract contained shall be so construed as to render the party of the first part in any way liable for the tax specifically upon the income of the holders of the bonds or stocks of the party of the second part."

Exhibit "B," pp. 6 and 14.

Other provisions of the lease show that the appellant thereby acquired the right to use and exercise during said term the powers,

privileges and franchises granted to the St. Louis, Alton and Terre Haute Railroad Company, under its charter from the State of Illinois, so far as the same relate to said leased line.

Ibid, pp. 7, 9, 10 and 11.

It is also stated in the bill that appellant, in the years 1873, 1874 and 1875, "as required by the laws of the State of Illinois, returned to the Auditor of Public Accounts true and correct schedules of all property it possessed in said State, on the first day of May in each of said years." These schedules are annexed to the bill as exhibits "C," "D" and "E," and show that said company returned its railroad track and the rolling stock used upon its leased line in Illinois in due form.

Printed Record, pp. 5, 10 and 15.

The schedules in said returns, required to be filled up with figures showing the amount and value of the shares of stock and the indebtedness of the corporation, were left blank, and across the face of said printed sheet in the return for 1873 was written the following:

"These items are not in the possession of this company and can only be furnished by St. Louis, Alton and Terre Haute Company. The capital stock has no value, or such is understood so be the case."

Ibid, p. 9.

A similar memorandum was made in the place of the returns of shares of stock and debt for 1874, and 1875.

Ibid, pp. 14, and 19.

It is averred that under the laws of the State of Illinois, a Board of Equalization convened at the city of Springfield, in each of said years and assessed against the appellant "as capital stock for the year 1873, $2,919,184; for the year 1874, $1,125,139, and for the year 1875, the sum of $1,004,416," as appears by exhibits "F" "G" and "H," containing the proceedings of the State Board of Equalization of Illinois for said years, respectively.

The bill states "that said assessment of capital stock against it is unjust, illegal and void and without authority of law," and that

the amount of said assessments had been certified to the county clerks of said several counties, who had extended taxes thereon, in the aggregate to the amount of $76,464.35, for the three years, and placed warrants for the collection of such taxes in the hands of the appellees as collectors of taxes in the several counties mentioned in the above title.

The bill prays for an injunction restraining the collection of such taxes and for general relief.

The following is quoted from the "Tabular Statement of the assessment upon capital stock of railroad companies," contained in the Proceedings of the State Board of Equalization, for 1873, made a part of the bill as exhibit "F," to-wit:

NAME OF COMPANY AND COUNTIES.	Length of main track in feet.	Distribut'n of capital stock to counties.	Total assessment of capital stock.
Chicago and Pacific			$67,912
Cook	79,200	$67,912	
Du Page			
	79,200	$67,912	
Chicago and Paducah			152,331
La Salle	5,910	$22,336	
Livingston	137,180	62,115	
Piatt	86,689	34,258	
Moultrie	115,561	45,667	
Shelby	20,129	7,955	
	385,469	$152,331	
Chicago, Pekin and Southwestern			$247,392
La Salle	28,391	$23,033	
Livingston	57,041	46,398	
Woodford	107,580	87,449	
Tazewell	111,201	90,452	
	304,142	$247,392	
Cincinnati, Lafayette and Chicago			102,669
Kankakee	67,345	$39,623	
Iroquois	107,183	63,046	
	174,528	$102,669	
* * * * * * *			
Indianapolis and St Louis (See note at bottom page 155.)			
Edgar	132,000	$398,796	
Coles	147,840	446,651	
Moultrie	21,120	63,807	
Shelby	142,560	430,699	
Christian	58,080	178,470	
Montgomery	179,520	542,362	
Macoupin	105,600	319,037	
Madison	166,320	502,483	
St. Clair	13,200	39,879	
	966,240	$2,919,184	
* * * * * * *			
St. Louis Alton and Terre Haute			*2,919,184
Belleville and Southern Illinois			†769,274
St. Clair	216,959	$452,140	
Randolph	34,625	72,158	
Perry	117,552	244,976	
	369,136	$769,274	
* * * * * * *			

*Distributed to counties on the line of the Indianapolis and St. Louis.
†Distributed to counties on the line of the St. Louis, Alton and Terre Haute.

Exhibit "F," pages 153, 155.

The exhibit to the bill containing the proceedings of the State Board of Equalization for 1874, contains the following:

Name of Company.	Capital Stock Paid up.		Total Indebtedness, except for Current Expenses.		Market or actual value of paid capital stock and debt, as determined by the State Board	Capital stock and debt as equalized, with the aggregate assessment of the state, by deducting 40 per cent. of market or actual value.	Total equalized value of tangible property assessed by State Board, and in counties.	Assessed and equaliz'd value of capital stock, being excess of equaliz'd value of capital stock and debt over equaliz'd value of tangible property.
	Total.	Proportion in Illinois.	Total.	Proportion in Illinois.				
Illinois and St. Louis	$1,361,100	$1,361,100	$275,231	$275,231	$727,845	$436,707	$212,808	$223,899
Indianapolis, Bloomington and Western	5,867,200	1,512,119	6,199,600	4,778,464	3,135,300	1,881,180	1,732,503	148,677
Ind. and St. Louis, St. L. A. & Terre Haute	pro rate by mileage.				4,509,792	2,705,875	1,580,736	1,125,139
St. Louis, Alton and Terre Haute	1,768,400	1,544,881	7,000,000	6,675,000	1,725,057	1,035,034	646,791	388,243
St. Louis and Southeastern	10,341,100	5,195,583	9,197,539	4,620,990	1,386,297	831,778	1,081,810	
St. Louis, Vandalia and Terre Haute	2,374,650	2,374,650	5,499,000	5,499,000	4,039,750	2,423,850	1,386,733	1,037,117

Exhibit "G," pp. 80 and 81.

NAME OF COMPANY AND COUNTIES.	Length of main track in feet.	Distribution of capital stock to counties.	Total assessm't of capital stock.
Indianapolis and St. Louis Railroad Company:			$1,125,139
Edgar	132,000	$153,708	
Coles	147,840	172,152	
Moultrie	21,120	24,593	
Shelby	142,560	166,004	
Christian	58,080	67,632	
Montgomery	179,520	209,042	
Macoupin	105,600	122,966	
Madison	166,320	193,671	
St. Clair	13,200	15,371	
Total	966,240	$1,125,139	
St. Louis, Alton and Terre Haute Railroad Co.:			388,248
St. Clair	216,950	228,189	
Randolph	34,625	36,417	
Perry	117,552	123,637	
Total	369,136	$388,243	

Exhibit "G," page 83.

The following is an extract from Exhibit "H," containing the proceedings of the State Board for 1875:

NAME OF COMPANY.	CAPITAL STOCK PAID UP.		TOTAL INDEBTEDNESS, EXCEPT FOR CURRENT EXPENSES.		Market or actual value of paid up capital stock and debt, as determined by the State Board.	Capit'l st'k and debt as equalized, with the aggregate assessment of the State, by deducting 50 per cent. of market or actual value.	Total equalized value of taxable property, assessed by State board and in counties.	Assessed and equalized val. of capital stock, being excess of equalized val. of capital stock and debt over equalized val. of tangible property
	Total.	Proportion in Illinois.	Total.	Proportion in Illinois.				
* * * * * * * *								
29 Illinois & St. Louis R. R. and Coal Co....	$1,361,100	$1,361,100	$275,231	$276,231	$727,845	$363,923	$260,687	$103,236
30 Indianapolis, Bloomington & Western...	7,610,000	5,833,340	6,199,000	4,778,464	3,135,300	1,567,650	1,137,969	429,681
31 Indianapolis & St. Louis.....	.....	.....	.....	.....	4,509,792	2,254,896	1,250,480	1,004,416
* * * * * * *								
52 St. Louis, Alton & Terre Haute.....	4,708,000	4,541,881	7,000,000	6,675,000	1,725,057	862,529	569,161	293,368

Exhibit "H," pages 64 and 65.

NAME OF COMPANY AND COUNTIES.	Length of main track in feet.	Distribution of capital stock to counties.	Total assessment of capital stock.
Indianapolis and St. Louis Railroad Company:			$1,004,416
Edgar	152,000	137,215	
Coles	147,840	133,481	
Moultrie	24,120	21,955	
Shelby	142,560	148,192	
Christian	58,080	60,375	
Montgomery	179,520	186,613	
Macoupin	105,600	109,772	
Madison	166,320	172,891	
St. Clair	15,200	15,722	
Total	966,240	$1,004,416	
St. Louis, Alton and Terre Haute Railroad Co.:			293,368
St. Clair	216,959	172,426	
Randolph	34,625	27,518	
Perry	117,552	93,424	
Total	369,136	$293,368	

Exhibit "H," pp 67, 68.

The Court ordered a temporary injunction in accordance with the prayer of the bill.

Printed record, p. 21.

The answer of the defendants below, filed August 5, 1876, admitted that the Indianapolis and St. Louis Railroad Company was originally a corporation, organized under the laws of the State of Indiana, but avers that by virtue of a certain act of the General Assembly of the State of Illinois, entitled "An act relating to the Indianapolis and St. Louis Railroad Company, and to authorize extension of said railroad," approved March 10, 1869, it was enacted as follows:

"SECTION 1. That the lease of the St. Louis, Alton and Terre Haute Railroad Company, and the property and road thereof, to the Indianapolis and St. Louis Railroad Company, under which the railroad extending from Terre Haute, in the State of Indiana, to East St. Louis, in the State of Illinois, is now operated, be and stand confirmed; that nothing in this act shall be construed to release the said lessor from any debt, cause of action, or contract now existing against them.

"SEC. 2. The said lessees, their associates, successors, and assigns shall be a railroad corporation in this state, under the style of 'The Indianapolis and St. Louis Railroad Company,' and shall possess the same or as large powers as are possessed by said lessor corporation, and such other powers as are usual to railroad corporations. Said Indianapolis and St. Louis Railroad Company may, and are hereby, authorized to extend their

said line of road from any point on the same between the cities of Pana and Litchfield, on said road, or from either of said points westward to the Mississippi river, opposite Louisiana, or any point below not exceeding fifteen (15) miles, in the State of Missouri, with a branch thereof to the city of Quincy, in the State of Illinois, and the same to connect with the railroad bridge over said river at said city of Quincy."

Private Laws of 1869, vol. 2, p. 316.
Printed record, p. 24.

That said Indianapolis and St. Louis Railroad Company accepted and acted under said act of April 10, 1869.

The answer admits that appellant leased from the St. Louis, Alton and Terre Haute Railroad Company the line of road in Illinois as alleged in the bill, and that it was the provisions of such lease as contained in Exhibit "B" that was so confirmed by said act of March 10, 1869, and admits that appellant made its return to the Auditor of Public Accounts for the years 1873, 1874 and 1875, as stated in the bill; and after referring to the clause in the lease in reference to the payment by the appellant of taxes upon the demised premises, the answer states that—

"The State Board of Equalization in pursuance of the statute assessed the value of the capital stock and franchises of the various railroad companies in the State of Illinois, including the St. Louis, Alton and Terre Haute Railroad Company, and distributed the ascertained value of the capital stock, including the franchise over and above the value of the tangible property; to the various counties into or through which said lines of railroad extended in accordance with the proportion that the number of miles of main track in the several counties bore to length of the entire lines of each road respectively, and that in pursuance thereof there was distributed as capital stock assessment of the St. Louis, Alton and Terre Haute R. R. Company for the portion of the line leased by the Indianapolis and St. Louis Railroad Company for the year 1873, the sum of $2,918,184; for the year 1874, the sum of $1,125,139; and for the year 1875, the sum of $1,004,416; upon which assessments of the property of the St. Louis, Alton and Terre Haute Railroad Company, in the counties through which the line leased by the Indianapolis and St. Louis Railroad Company, the various state, county, school and other municipal taxes were levied. And defendant further show unto your honor, that the taxes levied upon said assessments were under and in pursuance of the terms of said lease aforesaid charged to the Indianapolis and St. Louis Railroad Company; and defendants deny all and singular the allegations in the bill of complaint to the effect that said taxes were so levied, in whole or in part, as a tax upon the capital stock including the franchise of the Indianapolis and St. Louis Railroad Company; but were and are only the taxes levied upon the property and capital stock of the St. Louis, Alton and Terre Haute Railroad Company, in said counties leased as aforesaid and charged to the Indianapolis and St. Louis Railroad Company."

The answer further states that the Indianopolis and St. Louis Railroad Company did not make any return of its own capital stock and bonded debt, but in lieu thereof indorsed upon the schedule the memorandum before mentioned, (Ante p. 3, Printed Record, pp. 9, 14 and 19), referring to the returns of the St. Louis, Alton and Terre Haute railroad company for such information.

The answer further states that the said St. Louis, Alton and Terre Haute railroad company, in making its returns to the State Auditor of Public Accounts, endorsed upon the sheet upon which the return of its capital stock and indebtedness was made, the following, to-wit:

"'N. B. This report refers to the road operated by the St. Louis, Alton and Terre Haute Railroad Company, except the foregoing statement of stock and bonds, *that* having reference to all the road owned by said company, of which the main line (189 miles) and Alton branch (4 miles) are leased to and operated by the Indianapolis and St. Louis R. R. Company, and to which latter company the taxes thereon should be assessed, as by the terms of said lease said latter company covenanted to pay ALL taxes assessed against the St. Louis, Alton and Terre Haute Railroad Company by reason of its ownership of said property.'

The answer further states that the said assessments were based upon said returns of said companies so made as aforesaid; submits to the court that no equity appears upon the face of the bill, and contains a general denial of all allegations not expressly ad mitted

The affidavit of Charles E. Lippincott, Auditor of Public Accounts and Chairman of the State Board of Equalization of Illinois for the years 1873, 1874 and 1875, was filed, verifying the truth of the answer in general terms and expressly stating:

"That the State Board of Equalization did not for either of said years 1873, 1874 and 1875, assess the said Indianapolis and St. Louis Railroad Company upon its capital stock, but that the said State Board did assess the St. Louis, Alton and Terre Haute Railroad Company upon its capital stock and such portion of the capital stock assessment of said last named company as pertained to and was distributed to that part of its line of road leased and operated by the said Indianapolis and St. Louis Railroad Company was charged against said last named company."

Printed Record, p. 27.

The affidavit of R. W. Miles, a member of the state board, and chairman of its committee on assessment of the capital stock of

corporations for the years 1873, 1874 and 1875, was also filed with the answer to the same effect as the affidavit of Lippincott. [Ibid. p. 28.]

The appellant filed an amendment to its bill setting out the act of March 10, 1869, referred to in the answer, averring that

"Neither before or after the passage of said act did the stockholders or officers of the complainant, nor any other persons connected with the Indianapolis & St. Louis Railroad Company, organize, subscribe for stock, elect officers, or do any other act to incorporate under said Illinois statute, and that no capital stock of the corporation referred to in said act was ever subscribed by the lessees referred to in aforesaid lease and act; neither did said corporation at any time issue any share or shares of capital stock, but have continued to operate said Indianapolis & St. Louis Railroad the same since the passage of said act as before, and that all the capital stock owned by the complainant is the capital stock subscribed to and issued by the Indianapolis & St. Louis Railroad Company, a corporation existing under the laws of Indiana, and having its principal office in said state."

Printed record, p. 30.

No replication to the answer was filed.

The decree of the circuit court, entered March 23, 1877, recites as follows:

"Upon this day, by agreement of parties, this cause is submitted to the court for final hearing upon bill, amended bill, (to which answer is extended by consent), answer, and exhibits filed herein, and the court being sufficiently advised in the premises doth order, adjudge and decree that the injunction heretofore granted in this cause be dissolved and that the complainant's bill be dismissed, and that the complainant pay the costs of this suit to be taxed, from which decree the said complainant prays an appeal to the Supreme Court of the United States."

BRIEF FOR APPELLEES.

I.

THE BILL SHOWS NO EQUITY UPON ITS FACE.

The case sought to be made by the bill, is that appellant was a foreign corporation, and not subject to taxation upon its own capital stock under the revenue law of Illinois, as construed in

Western Union Telegraph Co., v. Leib, 76, Ill., 172.

The exhibits filed with the bill as a part thereof shows that the tax in question was assessed upon the capital stock of the St. Louis, Alton and Terre Haute Railroad Company, a corporation organized under the laws of Illinois, and that it was the duty of appellant to pay the tax as lessee of the line of road in Illinois, built by the Illinois corporation.

II.

THE AVERMENTS IN THE ANSWER ARE ADMITTED UPON THE RECORD.

It is a general rule in equity practice that when a cause is heard upon bill and answer, the answer is taken as "true in all points" whether responsive to the bill or not.

2 Dan., Ch. Plead. and Prac. (4 ed.) 982.
Childs v. Horr, 1 Clarke (Iowa), 432.
Warren v. Twilley, 10 Md., 39.
Perkins v. Nicholls, 11 Allen, 542.
Brinkerhoff v. Brown, 7 John., Ch. 217–223.
Dale v. McEvers, 2 Cowen 118.
DeWolf v. Long, 2 Gilm., 679.
Leeds v. Marine Ins. Co., 2 Wheat., 380.

III.

THE ANSWER DISCLOSES A COMPLETE DEFENSE.

Whatever may be held as to the vague and equivocal averments in the bill, the answer clearly shows that the taxes in question were not assessed upon the capital stock of the Indianapolis and St. Louis Railroad Company, but upon that of the St. Louis, Alton and Terre Haute, and charged against appellant by virtue of its position as lessee, and covenant to pay such taxes.

The right of the State of Illinois, under its present revenue law, to tax corporations organized under its laws, upon their capital stock, is fully established.

Porter v. R., R. I. & St. L. R. R. Co., 76 Ill., 561.

Republic Life Ins. Co. v. Poltak, 75 Ill., 292.

State Railroad Tax Cases, 2 Otto, 575.

The tax upon the capital stock of corporations, in the sense those terms are used in the Illinois revenue law, is a tax upon its property.

Porter v. R., R. I. & St. L. R. R. Co., 76 Ill., 563–572.

IV.

A TENANT IN POSSESSION IS LEGALLY CHARGEABLE WITH THE PAYMENT OF TAXES UPON THE DEMISED PROPERTY.

So far as the public is concerned, it is a general principle, that the tenant is bound to pay all taxes imposed on the premises, and irrespective of a covenant to pay, the State may enforce payment against the tenant.

Taylor's Landlord and Tenant, (5 Ed.) § 395, p. 293.

Blackwood v. Van Vleit, 30 Mich., 118.

Hughes v. Young, 5 Gill & John., 67.

And for stronger reasons this right exists where the tenant has covenanted to pay the taxes.

New York v. Cashman, 10 John., 96.

If, as between landlord and tenant, the latter is not bound to pay the taxes, he may pay the same nevertheless, and deduct the

amount from the rent, or maintain a suit therefor against the landlord.

Taylor's Landlord and Tenant, § 395, p. 293.

The statutes of Illinois, contemplate that the party in possession or "operating" a railroad shall be chargeable with the taxes thereon.

Rev. Stat. of 1874, pp. 865–866, §§ 40, 48.

Kennedy v. St. L. V. and T. H. R. R. Co., 62 Ill., 395.

V.

HE WHO SEEKS EQUITY MUST DO EQUITY.

It was upon the express condition that appellant would pay the taxes in question, that the Legislature of Illinois, by the Act of March 10, 1869, confirmed the lease and authorized appellant to exercise the franchises and operate the road in Illinois, leased from the St. Louis, Alton and Terre Haute Railroad Company.

Without the consent of the State, express or implied, the appellant, as a foreign corporation, could not lawfully operate the leased line in Illinois, and the State had the right to require payment of taxes on the leased property as the condition upon which such consent was granted.

Ducat v. Chicago, 10 Wal., 410.

Paul v. Virginia, 8 Wal., 168.

Bank of Augusta v. Earl, 13 Peters, 519.

When appellant has done equity and paid the taxes in compliance with its covenant, there will remain no foundation for this complaint.

ARGUMENT.

I.

THE BILL SHOWS NO EQUITY UPON ITS FACE.

In the case of *Western Union Tel. Co. vs. Lieb*, 76 Ill., 172, the Supreme Court of Illinois held that the revenue law of that State did not authorize the State Board of Equalization to assess the capital stock of foreign corporations doing business and exercising their franchises in that State, but only authorized such assessment upon the capital stock of corporations organized under or by the laws of Illinois.

This bill was evidently framed with a view to make a case under the authority of that decision—at least, *as nearly as the circumstances of the case would permit*. But therein lies the difficulty. The radical defect in the bill is inherent in the facts, and not in the good intentions of the pleader.

The original bill shows that the Indianapolis and St. Louis Railroad Company was a corporation organized under the laws of the State of Indiana. It also contains this averment:

"Your orator further shows that under the laws of the State of Illinois, a state board of equalization convened in the city of Springfield, in said state, in each of said years 1873,-'4,-'5, and did then and there *assess against your orator, as capital stock* for the year 1873, the sum of two million nine hundred and nineteen thousand one hundred dred and eighty-four dollars ($2,919,184); for the year 1874, the sum of $1,125,139, and for the year 1875, the sum of $1,004,416, as appears by exhibits F, G, and H, filed herewith and made part of this bill."

Printed record, p. 2.

By the casual reader, who did not closely scrutinize the language employed, this might be understood as an averment that the State Board assessed against the Indianapolis and St. Louis Railroad Company upon its capital stock the sums named for the years therein specified. This, however, is not the averment. It is only stated that said Board "did then and there assess against your orator *as* capital stock," etc.

When we refer to the exhibit filed with the bill and made part thereof, we can better understand the true import of this averment. It will there appear that the assessment was made upon the capital stock of the St. Louis, Alton and Terre Haute Railroad Company, a corporation organized under the laws of Illinois, and whose line of road the complainant had leased, and whose taxes it had covenanted to pay.

The lease containing such covenant was attached to the bill as Exhibit B, (ante p. 2.)

It appears from the Exhibits C, D and E, filed with and made part of the bill, that the Indianapolis and St. Louis Railroad Company returned to the State Auditor of Illinois the line so leased from the Illinois corporation as a part of its own "railroad track," and also made a proper return of its "rolling stock" used thereon (printed record, pages 2, 5, 10 and 15.) for the years 1873, 1874 and 1875, respectively; but in its returns for each of those years left the schedules blank, wherein were required to be stated the amount and value of the shares of stock and indebtedness of the corporation upon which the assessment of capital stock is based, under the statute of Illinois and rules of the State Board.

State Railroad Tax Cases, 2 Otto, 604.

In lieu of filling such blanks for 1875, the company wrote across the schedule the following memorandum:

"The Indianapolis & St. Louis R. R. Co. have no interest in the capital stock of the St. Louis, Alton & Terre Haute R. R. Co., and its officers have no knowledge of the amount of such capital stock. This information should be furnished by the corporate officers of the St. Louis, Alton & Terre Haute R. R. Co."

Printed record, p. 19.

And upon the returns for 1873 and 1874 made memoranda of like import.

Ibid, pp. 9 and 14.

This, we submit, shows that it was then the understanding of the appellant that it was proposed to assess the capital stock of the Illinois corporation, whose line of road appellant had leased and whose taxes it had covenanted to pay.

A reference to the "tabular statement of the assessment of the capital stock of railroad companies" contained in the proceedings of the state board for 1873, (Ante, p. —) filed with the bill as exhibit "F," pp. 153 and 155, and the notes of explanation accompanying the same expressly shows that there was no assessment upon the capital stock of the Indianapolis and St. Louis Railroad Company; and that the capital stock assessment charged against that company was that portion of the assessment upon the capital stock of the St. Louis, Alton and Terre Haute Railroad Company, which, under the Illinois revenue law was distributed to the counties upon the leased line of road operated by appellant.

The same is equally true as to the assessment of 1874 (ante p. 6,) Exhibit "G," pp. 80, 81 and 83. As to the year 1875, the fact that the assessment of capital stock assigned to the Indianapolis and St. Louis Railroad was a part of that assessed against the St. Louis, Alton and Terre Haute Railroad Company, and charged against appellant as lessee, does not so distinctly appear from notes of explanation, but does sufficiently appear from other facts and circumstances appearing on the record.

1. The Indianapolis and St. Louis Railroad Company made no returns of its own shares of stock and indebtedness for 1875 as a basis for the assessment of its capital stock, but very properly referred to the returns of the St. Louis, Alton and Terre Haute Company, for information upon which to base the capital stock assessment.

2. In the tabular statement contained in the proceedings of the State Board 1875 (ante p. 8), the two first columns, designed to be

filled up with figures showing the aggregate amount of shares of stock, indebtedness, are left blank opposite the name "Indianapolis and St. Louis," while these columns are filled with appropriate figures opposite the name "St. Louis, Alton and Terre Haute," and all other companies assessed upon their own capital stock.

Exhibit H, pp. 64, 65.

3. There is no averment in the bill showing that the Indianapolis and St. Louis Railroad Company was assessed upon its capital stock for 1875 or any other year, but only the equivocal statement that the State Board did "assess against your orators as capital stock," etc.

For aught appearing to the contrary, and consistently with this averment, the assessment may have been made upon the capital of the Illinois corporation, and charged against the "orator" as lessee of the road in Illinois. In a case of this character where the pleader chooses to employ language of uncertain import, every intendment should be taken against him.

The pleader must have used the language in this sense, at least as respects the assessment for the year 1873, otherwise the falsity of the averment would have been demonstrated by reference to Exhibit "F," pp. 153 and 155, filed with the bill as a part thereof (ante p. 5.)

The same averment applies to the assessments for the years 1873, 1874 and 1875, and the meaning attached to the words, "assess against your orator as capital stock," as respects 1873, we have the right to presume was intended in respect to the assessment for the year 1875.

II.

THE AVERMENTS IN THE ANSWER ARE ADMITTED UPON THE RECORD.

By agreement of the parties, the cause was heard upon the bill, amendments thereto, exhibits, and answer. No replication was filed to the answer, nor was any proof offered by either party.

"In such case the practice is that the answer is read, and must be admitted to be true in all points; and no other evidence is ad-

And upon the returns for 1873 and 1874 made memoranda of like import.

Ibid, pp. 9 and 14.

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For aught appearing to the contrary, and consistently with this averment, the assessment may have been made upon the capital of the Illinois corporation, and charged against the "orator" as lessee of the road in Illinois. In a case of this character where the pleader chooses to employ language of uncertain import, every intendment should be taken against him.

The pleader must have used the language in this sense, at least as respects the assessment for the year 1873, otherwise the falsity of the averment would have been demonstrated by reference to Exhibit "F," pp. 153 and 155, filed with the bill as a part thereof (ante p. 5.)

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II.

THE AVERMENTS IN THE ANSWER ARE ADMITTED UPON THE RECORD.

By agreement of the parties, the cause was heard upon the bill, amendments thereto, exhibits, and answer. No replication was filed to the answer, nor was any proof offered by either party.

"In such case the practice is that the answer is read, and must be admitted to be true in all points; and no other evidence is ad-

mitted, unless it be matter of record to which the answer refers, and which is provable by the record or documents which may be proved by affidavit, or *viva voce*, at the hearing."

Daniels' Chan. Pl. and Pr. (4 Am. Ed.), 982. See authorities cited in brief under above head (ante p. 13.)

If the complainant had put the answer in issue by replication it is to presumed that the defendant would have sustained its averments by the testimony of Mr. Lippincott, the State Auditor, and Mr. Miles, the chairman of the Committee of the State Board, who appear to have been personally acquainted with the facts, and whose affidavits were filed in support thereof.

Printed Record, pp. 27, 28.

The answer not having been traversed or denied by replication, there was no necessity for such proofs.

III.

THE ANSWER DISCLOSES A COMPLETE DEFENSE.

Upon the case as presented in the answer, it cannot be questioned that the taxes in controversy were assessed upon such portion of the capital stock of the St. Louis, Alton and Terre Haute Railroad Company as was distributed to that portion of its line of road in Illinois leased to and operated by the Indianapolis and St. Louis Railroad Company, and assessed against that company as lessee, in conformity to its covenant to pay such taxes.

Printed Record, p 25.

The Statutes of Illinois prescribe the manner in which the assessment upon capital stock of a railroad corporation shall be assigned and distributed to the several counties along and on different portions of the road, thus:

"The aggregate amount of the capital stock of railroad or telegraph companies assessed by said board shall be distributed proportionately by said board to the several counties in like manner that the property of railroads denominated "railroad track" is distributed. The amount so determined shall be certified by the Auditor to the county clerks of the proper counties. The county clerk shall, in like manner, distribute the value so certified to him by the Auditor to the county and to several towns, districts, villages and cities in

his county entitled to proportionate value of such capital stock. And said clerk shall extend taxes against such values the same as against other property in such towns, districts, villages and cities."

Rev. Stat. of Ill. (of 1874), p. 875, § 110.

And thus as to the "Railroad track"—

"The value of the railroad track shall be listed and taxed in the several counties towns, villages, districts and cities, in the proportion that the length of the main track in such county, town, village, district or city bears to the whole length of the road in this State."

Ibid, p. 865, § 43.

The tax so assessed under the designation "capital stock" is, in reality, an assessment upon the property or capital of the corporation, including its franchises considered as property.

Porter v. R., R. I. and St. L. R. R. Co., 76 Ill., 567–574

State Railroad Tax Cases, 2 Otto, 602.

In the case last cited the Court held that: "This element the State of Illinois calls the value of the franchise and capital stock of the corporation—the value of the right to use this tangible property in a special manner for purposes of gain. This constitutes the third valuation, which is likewise to be made by the Board of Equalization; and, when thus ascertained, is subjected to the taxation of the State, counties, towns and cities, by the same rule that the value of the roadbed is, namely, according to the length of the track in each taxing locality. The words 'capital stock,' as here used, do not mean the shares of the stock, but the aggregate capital of the company."

We submit, therefore, that so much of this assessment upon the "capital stock" of the St. Louis, Alton and Terre Haute Railroad Company as, under the statute, was properly distributed to the counties upon the leased line, is in reality a tax upon such leased line and franchises pertaining thereto, and falls within the covenant of the appellant to pay all taxes "charged, levied, assessed or imposed" thereon, or upon "the said party of the second part, its successors or assigns, for or on account of its ownership of said railroad, or either or any part thereof, or of such property or any part thereof."

The St. Louis, Alton and Terre Haute Railroad Company, by virtue of the lease, vested the Indianapolis and St. Louis Railroad Company with the exclusive right to operate the leased line and exercise the franchises granted to the lessor by the State of Illinois pertaining to such leased line, in as ample a manner as it had power to vest such rights without express legislative authority.

The State of Illinois, by virtue of the act of March 10, 1869, confirmed this lease according to its terms.

The appellant thereby acquired, not only the visible tangible property constituting the leased line, but the incorporeal right to operate, use, and "at all times during the period of ninety-nine years aforesaid, demand, collect and receive any and all fares, charges, freights, tolls, rents, revenues, issues and profits of" the line so leased.

Exhibit B, p. 11, Art. vi.

In other words, the appellant acquired under such lease and act the right to exercise and use the franchises of the St. Louis, Alton and Terre Haute Railroad Company so far as the same pertained to the line of road so leased.

The record shows that it was upon this property that the taxes in question were assessed.

IV.

THE STATE HAS THE RIGHT TO ENFORCE THE COLLECTION OF TAXES UPON THE DEMISED PROPERTY AGAINST THE TENANT.

"As far as the public is concerned, it is a general principle that the tenant is to pay all taxes imposed upon the premises; the land itself, in the hands of the occupant, is debtor to the public, and *prima facie* it is the tenant's tax, because all the remedies are against him. He is therefore for his own protection authorized to pay such taxes, as well as assessments for public improvements, when demanded, and to charge them to account of rent. For as between landlord and tenant, the landlord is bound, as we have seen, to indemnify the tenant against all such charges as he has

been obliged to pay, and for which the landlord was primarily liable. Whenever, therefore, a tenant advances the tax, ground rent, assessment, or other prior charge on the land, he may look to the landlord again for it, and recover the amount paid in an ordinary suit at law, or deduct it out of the rent, unless it is provided by the lease that the tenant shall pay it."

Taylor's Landlord and Tenant, § 395, p. 293.

Hilliard on Taxation, p. 175, § 240.

Bemis v. Phelps, 1 Vermont, 1.

Spangler v. York County, 13 Penn. St., 322.

This principle applies with additional force in cases where the tenant has covenanted to pay such taxes.

New York v. Cashman, 10 John, 96.

A tenant for life, not only in respect to the government, but also as between himself and the owner of the reversion, is chargeable with the payment of taxes, independently of a covenant to pay.

Higgins v. Crosby, 40 Ill., 261, 263.

Prettyman v. Walston, 34 Ill., 175, 191.

Waldo v. Cummings, 45 Ill., 251.

Varney v. Stevens, 22 Me., 331.

The same principle has been applied in case of a tenancy for a term of ninety-nine years, where there was no covenant that the tenant should pay the taxes.

Hughes v. Young, 5 Gill and John, 67.

The Statutes of Illinois clearly contemplate that the payment of taxes assessed upon the property or capital stock of railroad corporations may be enforced against the tenant in possession who "operates" the road and exercises the franchises pertaining thereto, thus :

"Every person, company or corporation owning, operating or constructing a railroad in this state, shall return sworn lists or schedules of the taxable property of such railroad, as hereinafter provided. Such property shall be listed and assessed with reference to the amount, kind and value, on the first day of May of the year in which it is listed."

Rev. Stat. of Ill. (of 1874), p. 865, § 40.

"At the same time that the lists or schedules are hereinbefore required to be returned to the county clerks, the person, company or corporation running, operating or con-

structing any railroad in this state, shall return to the Auditor of Public Accounts sworn statements or schedules, as follows:

First—Of the property denominated "railroad track," giving the length of the main and side or second tracks and turnouts, and showing the proportions in each county, and the total in the state.

Second—The "rolling stock," giving the length of the main track in each county, the total in this state, and the entire length of the road.

Third—Showing the number of ties in track per mile, the weight of iron or steel per yard, used in main or side tracks; what joints or chairs are used in track; the ballasting of road, whether graveled or dirt; the number and quality of buildings or other structures on "railroad track;" the length of time iron in track has been used, and the length of time the road has been built.

Fourth—A statement or schedule showing:

1. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

2. The amount of capital stock paid up.

3. The market value, or if no market value, then the actual value of the shares of stock.

4. The total amount of all indebtedness, except for current expenses for operating the road.

5. The total listed valuation of all its tangible property in the State.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the Auditor of Public Accounts."

Ibid, p. 866, § 48.

The assessment is based upon the returns thus required to be made by the person or company "operating" the railroad.

The Supreme Court of Illinois, in the construction of a similar statute, the provisions of which are embodied in the present revenue law of the State, held that "the persons or company operating a road are liable for the taxes upon the rolling stock *used* upon such road, without reference to the ownership of the road or the rolling stock so used.

Kennedy v. St. L., V. and T. H. R. R. Co., 62 Ill., 395.

Dunlap v. Gallatin County, 15 Ill., 7.

The appellant, in its returns to the State Auditor for each year, returned the right of way of this leased line in Illinois and rolling stock used thereon as its own "railroad track" and "rolling stock."

Printed Record, pp. 5–15.

It does not appear to be questioned that the taxes assessed upon the "railroad track" were properly chargeable to the appellant as

lessee. We have already shown that under the statute of Illinois the assessment under the designation "capital stock" is required to be distributed to the various counties and other municipal corporations along the line in like manner as the assessment upon "railroad track." (Ante p. 17.)

It is also established that the assessment under the head "capital stock" is an assessment upon the property of the corporation, and not upon the shares of stock.

Porter v. R., R. I. and St. L. R. R. Co., 76 Ill., 567.
State Railroad Tax Cases, 2 Otto, 602.

It is manifest that if the assessment upon the "railroad track" of the leased line was properly assessed against appellant as lessee, such portion of the assessment under the designation "capital stock" as the law required to be assigned to and distributed upon the leased line, ought also to be assessed against the same party.

V.

HE WHO SEEKS EQUITY MUST DO EQUITY.

The Indianapolis and St. Louis Railroad Company has no authority to operate the leased line in Illinois, except so far as it derives the same from the act of March 10, 1869.

The articles of association under which it organized in Indiana only contemplate the building and operation of a certain line of road in that State.

Printed Record, p. 4.

No authority was attempted to be conferred to lease and operate railroads in Illinois.

The corporation assumed to lease from the St. Louis, Alton and Terre Haute Railroad Company, its main line of road and franchises connected therewith, for the period of ninety-nine years. The General Assembly of Illinois, by the act of March 10, 1869, confirmed this lease, "according to the terms" thereof. This was not only a ratification of the lease in respect to these provisions